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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 458

GEORGE SYLVESTER VIERECK, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED OCTOBER 15, 1942.

CERTIORARI GRANTED NOVEMBER 16, 1942.

APPENDIX TO APPELLANT'S BRIEF

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 8204

GEORGE SYLVESTER VIERECK, *Appellant*

versus

THE UNITED STATES OF AMERICA, *Appellee*

Appeal from the United States District Court for the District of Columbia

---

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA

No. 8204.

GEORGE SYLVESTER VIERECK, *Appellant*,

v.

THE UNITED STATES OF AMERICA, *Appellee*.

APPENDIX TO BRIEF FOR APPELLANT.

Indictment, exhibits thereto, Demurrer, Order on Demurrer, Motion for Bill of Particulars, Motion for Change of Venue and Other Relief and exhibit thereto of Government's Affidavit of Personal Bias and Prejudice of Judge T. Allan Goldsborough, and other papers designated by appellant.

Indictment.

The Grand Jurors of the United States of America, duly impaneled, sworn, and charged, at a regular term, to wit: the July 1941 term, in the District Court of the United States for the District of Columbia, having begun but not finished during the said July 1941 term of Court, an investigation of the matters charged in this indictment, and having been by order of said Court, pursuant to the provisions of Section 284 of the Judicial Code as amended (28 U. S. C. § 421) authorized to continue to sit at the October 1941 Criminal term of said Court to finish investigations begun but not finished in the July 1941 term, and inquiring in and for said District, upon their oath present and find as follows, to wit:

COUNT I.

1. During the period from September 15, 1939 to the date of the return of this indictment, the Munchner Neueste Nachrichten was a foreign business, that is to say, a newspaper having its principal place of business at Sendlingerstrasse 80, Munich, Germany, and was a foreign principal as defined in the Act of June 8, 1938, as amended by the Act of August 7, 1939, hereinafter referred to as the Act.

2. During the period from September 15, 1939 to the date of the return of this indictment, Dr. Giselher Wirsing, Editor-in-chief of the aforesaid Munchner Neueste Nachrichten, was a person domiciled abroad, that is to say, in Munich, Germany, and was a foreign principal as defined in the Act.

3. During the period from September 15, 1939 to the date of the return of this indictment Verlag Knorr and Hirth, publisher of the said Munchner Neueste Nachrichten, was a foreign business located in Munich, Germany, and was a foreign principal as defined in the Act.

4. During the period from September 15, 1939 to and including July 15, 1941, the German Library of Information was a domestic organization subsidized directly and indirectly in whole and in part by the government of a foreign country and was a foreign principal as defined in the Act.

5. During the period from September 15, 1939 to the date of the return of this indictment, George Sylvester Viereck, hereby indicted and named as the defendant herein, acted and engaged and agreed to act as a public-relations counsel, publicity agent, agent and representative for and received compensation from and was under the direction of the said Munchner Neueste Nachrichten, the said Dr. Giselher Wirsing, the said Verlag Knorr and Hirth, and the said German Library of Information, and

was an agent of a foreign principal as defined in the Act, and as such agent of a foreign principal the defendant, George Sylvester Viereck, was required by the Act and by the rules and regulations prescribed and promulgated by the Secretary of State of the United States pursuant to the Act, hereinafter referred to as the regulations, to file forthwith a registration statement and, within thirty days after the expiration of each period of six months, succeeding the first filing a supplemental registration statement, in the form prescribed by the Act and regulations, setting forth, in addition to other information, a comprehensive statement of the nature of the business of the registrant.

6. On or about the twenty-sixth day of September 1939, the defendant, George Sylvester Viereck, filed a registration statement with the Secretary of State of the United States at Washington, D. C., in the form prescribed and prepared by the said Secretary of State, pursuant to the provisions of the said Act and regulations, a photo-
3 static copy of which said registration statement is hereto attached, marked Exhibit "A", and incorporated herein with the same force and effect as though the same were herein set forth in full.

7. On or about the twenty-sixth day of September 1939, in the District of Columbia and within the jurisdiction of this Court, the defendant, George Sylvester Viereck, unlawfully, willfully, feloniously and knowingly omitted to state and set forth in said registration statement a material fact required to be stated therein, that is to say, in response to the requirement in paragraph 11 of the registration form, prescribed and prepared by the said Secretary of State as aforesaid, that the registrant make a "Comprehensive statement of nature of business of registrant", the defendant, George Sylvester Viereck, unlawfully, willfully, feloniously and knowingly omitted to state

and set forth the fact that during the period from July 1, 1935 to and including September 26, 1939, within the United States of America, as a part of his business and activities the defendant, George Sylvester Viereck:

(a). Advised, consulted and informed, directly and indirectly, divers persons in matters pertaining to political interests, public relations and public policy; and

(b). Engaged, directly and indirectly, in the placing and disseminating within the United States of oral and written information and matter for publication by writing, editing, preparing and revising speeches, public addresses and written matter pertaining to political interests, public relations and public policy, which were thereafter printed and published in whole and in part in books, periodicals, and newspapers, and in the Congressional Record and also were disseminated by means of radio broadcasts; and

(c). Wrote, edited, prepared and revised written and printed matter, articles and essays dealing with political interests, public relations and public policy and caused the same to be printed, published, and
4 distributed in magazines, periodicals and newspapers under false and fictitious names including among others James Burr Hamilton, George F. Corners, Donald Furtherman Wicketts, William L. Stidger, and Dr. Claudious Murchison, for the purpose, among others, of concealing from the public of the United States the true name and identity of the writer;

contrary to the form of the statute of the United States of America in such case made and provided and against the peace and dignity of the United States of America.

COUNT II.

1. The Grand Jurors aforesaid, inquiring as aforesaid, upon their oaths aforesaid, do hereby reaffirm, reallege, and incorporate herein by reference, with the same force and effect as though the same were herein set forth in full, each and every allegation contained in paragraphs 1 to 5, inclusive, of Count I of this indictment.

2. On or about the twenty-third day of April 1940, the defendant George Sylvester Viereck, filed a supplemental registration statement with the Secretary of State of the United States in the form prepared and prescribed by the said Secretary of State pursuant to the provisions of the Act and regulations, a photostatic copy of which said supplemental statement is hereto attached, marked Exhibit "B", and incorporated herein with the same force and effect as though the same were set forth in full.

3. On or about April 23, 1940, in the District of Columbia and within the jurisdiction of this Court, the defendant, George Sylvester Viereck, unlawfully, willfully, feloniously and knowingly omitted to state and set forth in said supplemental registration statement a material fact required to be stated therein, that is to say, in response to the requirement in paragraph 11 of the said supplemental registration form that the registrant make a "Comprehensive statement of nature of business of registrant," the defendant, George Sylvester Viereck, unlawfully, willfully, feloniously and knowingly omitted to state and set forth the fact that during the period from September 26, 1939 to and including April 23, 1940, within the United States of America,
5 as a part of his business and activities the defendant, George Sylvester Viereck:

(a). Advised, consulted and informed, directly and indirectly, divers persons in matters pertaining to

political interest, public relations and public policy; and

(b). Engaged, directly and indirectly, in placing and disseminating within the United States of oral and written information and matter for publication by writing, editing, preparing and revising speeches, public addresses and written matter pertaining to political interests, public relations and public policy, and which were thereafter printed and published in whole and in part in books, periodicals and newspapers and in the Congressional Record, and also were disseminated by means of radio broadcasts; and

(c). Advised, consulted and informed, directly and indirectly, one Prescott Dennett, and divers other persons, in matters pertaining to political interests, public relations and public policy, by aiding, abetting and assisting the said Prescott Dennett and divers other persons, in organizing and setting up a certain committee known as and by the name and style of "Make Europe Pay War Debts Committee", and by contributing large sums of money for the maintenance of and to defray the expenses of the said committee, it being the plan and purpose, among others, of the defendant, George Sylvester Viereck, to use the "Make Europe Pay War Debts Committee", the said Prescott Dennett and divers other persons, to disseminate, distribute and place certain oral and written information and matter for publication through newspapers, radio broadcasts, periodicals and in other manner in order to influence, persuade, bend and mold American public opinion in matters pertaining to political interests, public relations and public policy; and

(d). Wrote, edited, prepared and revised written and printed matter, articles and essays dealing with

political interests, public relations and public policy and caused the same to be printed, published, and distributed in magazines, periodicals and newspapers under false and fictitious names including among others James Burr Hamilton, George F. Corners, Donald Furtherman Wicketts, William L. Stidger, and Dr. Claudius Murchison, for the purpose, among others, of concealing from the public of the United States the true name and identity of the writers;

contrary to the form of the statute of the United States of America in such case made and provided and against the peace and dignity of the United States of America.

COUNT III.

1. The Grand Jurors aforesaid, inquiring as aforesaid, upon their oaths aforesaid, do hereby reaffirm, reallege, and incorporate herein by reference, with the same force and effect as though the same were herein set forth in full, each and every allegation contained in paragraphs 1 to 5, inclusive, of Grant I of this indictment.

2. On or about the twenty-fifth day of October 1940, the defendant, George Sylvester Viereck, filed a supplemental registration statement with the Secretary of State of the United States at Washington, D. C., in the form prescribed and prepared by the said Secretary of State, pursuant to the provisions of the said Act and regulations, a photostatic copy of which supplemental registration statement is hereto attached and marked Exhibit "C" and incorporated herein with the same force and effect as though the same were herein set forth in full.

3. On or about October 25, 1940, in the District of Columbia and within the jurisdiction of this Court, the defendant, George Sylvester Viereck, unlawfully, willfully, fel-

oniously and knowingly omitted to state and set forth in said supplemental registration statement a material fact required to be stated therein, that is to say, in response to the requirement in paragraph 11 of the supplemental
7 registration form that the registrant make a "Comprehensive statement of nature of business of registrant", the defendant, George Sylvester Viereck, unlawfully, willfully, feloniously and knowingly omitted to state and set forth the fact that during the period from April 23, 1940 to and including October 25, 1940, within the United States of America, as a part of his business and activities the defendant, George Sylvester Viereck:

(a). Advised, consulted and informed, directly and indirectly, divers persons in matters pertaining to political interests, public relations and public policy; and

(b). Engaged, directly and indirectly, in the placing and disseminating within the United States of oral and written information and matter for publication in that, among other things, the said defendant, George Sylvester Viereck, wrote, edited, prepared, and revised speeches, public addresses and written matter pertaining to political interests, public relations and public policy, and which were thereafter printed and published in whole and in part in the Congressional Record and other books, periodicals and newspapers, and also were disseminated by means of radio broadcasts; and

(c). Advised, consulted and informed, directly and indirectly, one Prescott Dennett, and divers other persons, in matters pertaining to political interests, public relations and public policy by aiding, abetting and assisting the said Prescott Dennett and divers other persons in the operation and work of certain committees known as and by the name and style of "Make

Europe Pay War Debts Committee" and "Islands for War Debts Committee" and by contributing large sums of money for the maintenance of and to defray the expenses of the said committees, it being the plan and purpose, among others, of the defendant, George Sylvester Viereck, to use the "Make Europe Pay War Debts Committee" and the said "Islands for War Debts Committee" the said Prescott Dennett and divers other persons to disseminate, distribute by mail under
8 Congressional franking privilege and otherwise certain speeches and public addresses delivered on the floor of Congress and elsewhere by present and former members of both houses of the Congress of the United States, and to place certain oral and written information and matter for publication through newspapers, radio broadcasts, periodicals and in other manner in order to influence, persuade, bend and mold American public opinion in matter pertaining to political interests, public relations, and public policy; and

(d). Engaged, directly and indirectly, within the United States of America, in the distributing, disseminating and placing of oral and written information and matter pertaining to political interests, public relations and public policy for publication through newspapers, periodicals, manuscripts, books and pamphlets through the medium of a publishing house known as and by the name of Flanders Hall, Inc., a New Jersey corporation, having its principal place of business at Scotch Plains, New Jersey, which corporation and the officers and operations of which the defendant, George Sylvester Viereck, financed, controlled and directed and to which he, the said George Sylvester Viereck, furnished manuscripts and other written and printed material for the purpose, among others, of

having the said manuscripts and other written and printed material published, printed, sold and distributed by the said Flanders Hall, Inc., and by others, within the United States of America; and

(e). Published, printed, sold, distributed and disseminated and caused to be printed, published, sold, distributed and disseminated by mail and otherwise under the imprint of the said Flanders Hall, Inc., publishers, books, pamphlets, manuscripts, and other material pertaining to political interests, public relations and public policy, including in whole and in part translations and adaptations from books, pamphlets, manuscripts, and other matter issued and distributed by and through the DEUTSCHE INFORMATIONS-STELLE, BERLIN, GERMANY, and also books, pamphlets manuscripts, and other matter written and printed in the United States, including among others the following:

9 LORD LOTHIAN V. LORD LOTHIAN
THE HAPLESS BOERS
DEMOCRACY ON THE NILE
MISADVENTURE IN SCANDINAVIA
WAR AGAINST WOMEN AND CHILDREN
THE WHIPPING BLOCK
TURKEY REBORN
INHUMANITY UNLIMITED
WHAT ABOUT AFRICA
DOUBLECROSS IN PALESTINE

for the purpose, among others, of influencing, persuading, bending and molding American public opinion in matters pertaining to political interests, public relations and public policy; and

(f). Wrote, edited, prepared and revised written and printed matter, articles and essays dealing with political interests, public relations and public policy and caused the same to be printed, published, and distributed in magazines, periodicals and newspapers under false and fictitious names including among others James Burr Hamilton, George F. Corners, Donald Furtherman Wicketts, William L. Stidger, and Dr. Claudius Murchison, for the purpose, among others, of concealing from the public of the United States the true name and identity of the writer;

contrary to the form of the statute of the United States of America in such case made and provided and against the peace and dignity of the United States of America.

COUNT IV.

1. The Grand Jurors aforesaid, inquiring as aforesaid, upon their oaths aforesaid, do hereby reaffirm, reallege, and incorporate herein by reference, with the same force and effect as though the same were herein set forth in full, each and every allegation contained in para-
10 5, inclusive, of Court I of this indictment

2. On or about the 17th day of March 1941, the defendant, George Sylvester Viereck, filed a registration statement with the Secretary of State of the United States at Washington, D. C., in the form prescribed and prepared by the said Secretary of State pursuant to the provisions of the Act and regulations, a photostatic copy of which registration statement is hereto attached, marked Exhibit "D", and incorporated herein with the same force and effect as though the same were herein set forth in full.

3. On or about March 17, 1941, in the District of Columbia and within the jurisdiction of this Court, the defendant, George Sylvester Viereck, unlawfully, willfully, feloniously and knowingly omitted to state and set forth in said registration statement a material fact required to be stated therein, that is to say, in response to the requirement in paragraph 11 of the registration form that the registrant make a "Comprehensive statement of nature of business of registrant", the defendant, George Sylvester Viereck, unlawfully, willfully, feloniously and knowingly omitted to state and set forth the fact that during the period from October 25, 1940, to and including March 17, 1941, within the United States of America, as a part of his business and activities the defendant, George Sylvester Viereck:

(a). Wrote, revised, edited and prepared manuscripts, documents and other written matter, which said manuscripts, documents and other written matter pertained to political interests, public relations and public policy, and which said manuscript, documents and other printed matter and portions thereof were thereafter printed and published in the Congressional Record; and which said manuscripts, documents and other printed matter were thereafter published in whole and in part by Flanders Hall, Inc.

(b). Consulted, conferred and advised with divers persons in connection with speeches, public addresses, radio broadcasts, manuscripts, pamphlets, books, periodicals and other matter pertaining to political interests, public relations and public policy; and

11 (c). Advised, consulted and informed, directly and indirectly, one Prescott Dennett and divers other persons in matters pertaining to political interests, public relations and public policy by aiding, abetting and assisting the said Prescott Dennett and divers other

persons, in the operation and work of certain committees known as and by the name and style of "Make Europe Pay War Debts Committee" and "Islands For War Debts Committee", and "War Debts Defense Committee", and by contributing large sums of money for the maintenance of and to defray the expenses of the said committees; it being the plan and purpose, among others, of the defendant, George Sylvester Viereck, to use the "Make Europe Pay War Debts Committee", "Islands For War Debts Committee", "War Debts Defense Committee", Prescott Dennett and divers other persons, to disseminate, distribute by mail under Congressional franking privilege and otherwise, certain speeches and public addresses delivered on the floor of Congress and elsewhere by present and former members of both houses of the Congress of the United States, and to place oral and written information and matter for publication through newspapers, radio broadcasts, periodicals and in other manner in order to influence, persuade, bend and mold American public opinion in matters pertaining to political interests, public relations and public policy; and (d). Engaged, directly and indirectly, within the United States, in distributing, disseminating and placing of oral and written information and matter for publication through manuscripts, books and pamphlets through the medium of a publishing house known as and by the name of Flanders Hall, Inc., a New Jersey corporation, having its principal place of business at Scotch Plains, New Jersey, which corporation and the officers and operations of which the defendant, George Sylvester Viereck, financed, controlled and directed and to which he, the defendant, furnished certain manuscripts and other material for the purpose,

among others, of having the said manuscripts and other material published, printed, sold and distributed
12 by the said Flanders Hall, Inc. and by others within the United States of America; and

(e). Published, printed, sold, distributed and disseminated and caused to be printed, published, sold, distributed and disseminated by mail and otherwise, books, pamphlets, manuscripts and other material, including in whole and in part translations and adaptations from books, pamphlets, manuscripts and other matter issued and distributed by and through the DEUTSCHE INFORMATIONSSTELLE, BERLIN, GERMANY, and also books, pamphlets, manuscripts and other matter written and printed in the United States, including, among others, the following:

LORD LOTHIAN V. LORD LOTHIAN
THE HAPLESS BOERS
DEMOCRACY ON THE NILE
MISADVENTURE IN SCANDINAVIA
WAR AGAINST WOMEN AND CHILDREN
THE WHIPPING BLOCK
TURKEY REBORN
INHUMANITY UNLIMITED
WHAT ABOUT AFRICA
DOUBLECROSS IN PALESTINE

for the purpose, among others, of influencing, persuading, bending and molding American public opinion in matters pertaining to political interests, public relations and public policy; and

(f). Wrote, edited, prepared and revised written and printed matter, articles and essays dealing with political interests, public relations and public policy and caused the same to be printed, published, and distributed in magazines, periodicals and newspapers under

false and fictitious names including, among others, James Burr Hamilton, George F. Corners, Donald Furtherman Wicketts, William L. Stidger, and Dr. Claudius Murchison, for the purpose, among others, of concealing from the public of the United States the true name and identity of the writer;

contrary to the form of the statute of the United States of America in such cases made and provided and against the peace and dignity of the United States of America.

COUNT V.

13 1. The Grand Jurors aforesaid, inquiring as aforesaid, upon their oaths aforesaid do hereby reaffirm, reallege, and incorporate herein by reference, with the same force and effect as though the same were herein set forth in full, each and every allegation contained in paragraphs 1 to 5, inclusive, of Count I of this indictment.

2. On or about April 25, 1941, the defendant, George Sylvester Viereck, filed a supplemental registration statement with the Secretary of State of the United States at Washington, D. C., in the form prescribed and prepared by the said Secretary of State pursuant to the provisions of the Act and regulations, a photostatic copy of which supplemental registration statement is hereto attached, marked Exhibit "E", and incorporated herein with the same force and effect as though the same were herein set forth in full.

3. On or about April 25, 1941, in the District of Columbia and within the jurisdiction of this Court, the defendant, George Sylvester Viereck, unlawfully, willfully, feloniously and knowingly omitted to state and set forth in said supplemental registration statement a material fact required to be stated therein, that is to say, in response

to the requirement in paragraph 11 of the supplemental registration form that the registrant make a "Comprehensive statement of nature of business of registrant", the defendant, George Sylvester Viereck, unlawfully, willfully, feloniously and knowingly omitted to state and set forth the fact that during the period from March 17, 1941, to and including April 25, 1941, within the United States of America, as a part of his business and activities the defendant, George Sylvester Viereck:

(a). Wrote, revised, edited and prepared manuscripts, documents and other written matter which said manuscripts, documents and other written matter pertained to political interests, public relations and public policy, and which said manuscripts, documents
14 and other printed matter and portions thereof were thereafter inserted and printed and published in whole and in part in the Congressional Record; and which said manuscripts, documents and other printed matter were thereafter published in whole and in part by Flanders Hall, Inc.

(b). Consulted, conferred and advised with divers persons in connection with speeches, public addresses, radio broadcasts, manuscripts, pamphlets, books, periodicals and other matter pertaining to political interests, public relations and public policy; and

(c). Advised, consulted and informed, directly and indirectly, one Prescott Dennett and divers other persons in matters pertaining to political interests, public relations and public policy by aiding, abetting and assisting the said Prescott Dennett and divers other persons in the operation and work of certain committees known as and by the name and style of "Make Europe Pay War Debts Committee", "Islands For War Debts Committee" and "War Debts Defense Com-

mittee", and by contributing large sums of money for the maintenance of and to defray the expenses of the said committees; it being the plan and purpose, among others, of the defendant, George Sylvester Viereck, to use the "Make Europe Pay War Debts Committee", "Islands For War Debts Committee", "War Debts Defense Committee" and Prescott Dennett and divers other persons to the Grand Jurors unknown to disseminate, distribute by mail under Congressional franking privilege and otherwise certain speeches and public addresses delivered on the floor of Congress and elsewhere by present and former members of both houses of the Congress of the United States and to place certain oral and written information and matter for publication through newspapers, radio broadcasts, periodicals and in other manner in order to influence, persuade, bend and mold American public opinion in matters pertaining to political interests, public relations and public policy; and

(d). Engaged, directly and indirectly, within the United States, in distributing, disseminating and placing of oral and written information and matter for publication in the form of manuscripts, books and pamphlets through the medium of a publishing house known as and by the name of Flanders Hall, Inc., a New Jersey corporation, having its principal place of business at Scotch Plains, New Jersey, which corporation and the officers and operations of which the defendant, George Sylvester Viereck, financed, controlled and directed and to which he, the said George Sylvester Viereck, furnished certain manuscripts and other material for the purpose among others of having the said manuscripts and other material published, printed, sold and distributed by the said Flanders Hall, Inc.

and by others within the United States of America; and

(e). Published, printed, sold, distributed and disseminated and caused to be printed, published, sold, distributed and disseminated by mail and otherwise, books, pamphlets, manuscripts and other material, including in whole and in part translations and adaptations from books, pamphlets, manuscripts and other matter issued and distributed by and through the DEUTSCHE INFORMATIONSSTELLE, BERLIN, GERMANY, and also books, pamphlets, manuscripts and other matter written and printed in the United States, including among others the following:

LORD LOTHIAN V. LORD LOTHIAN
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THE WHIPPING BLOCK
TURKEY REBORN
INHUMANITY UNLIMITED
WHAT ABOUT AFRICA
DOUBLECROSS IN PALESTINE

for the purpose, among others, of influencing, persuading, bending and molding American public opinion in matters pertaining to political interests, public relations and public policy; and

(f). Wrote, edited, prepared and revised written and printed matter, articles and essays dealing with political interests, public relations and public policy and caused the same to be printed, published, and distributed in magazines, periodicals and newspapers under false and fictitious names including among others
16 James Burn Hamilton, George F. Corners, Donald

Furtherman Wicketts, William L. Stidger, and Dr. Claudius Murchison, for the purpose, among others of concealing from the public of the United States the true name and identity of the writer;

contrary to the form of the statute of the United States of America in such case made and provided and against the peace and dignity of the United States of America.

EDWARD M. CURRAN,
United States Attorney in and for the District of Columbia.

WENDELL BERGE,
Assistant Attorney General.

GEORGE A. McNULTY,
Special Assistant to the Attorney General.

WILLIAM POWER MALONEY,
Special Assistant to the Attorney General.

EDWARD J. HICKEY, JR.,
Special Assistant to the Attorney General.

17 Registration No. 387

Date of Registration September 26 1939

(Not to be filled in by registrant)

UNITED STATES OF AMERICA

DEPARTMENT OF STATE

REGISTRATION STATEMENT

(Division of Controls
Sep 26 1939
ack 9-26-39
L H P/M J U
Department of State)

For persons required to register with the Secretary of State pursuant to section 2 of the Act, Public No. 583, 75th Congress, 3d Session, approved on June 8, 1938, as amended by the Act, Public, No. 319, 76th Congress, 1st Session, approved August 7, 1939.

(Note.—All spaces must be filled in. Where space in the registration statement form does not permit full answers to questions, the information required may be set forth in supplementary papers incorporated by reference in the registration statement and submitted therewith. Supplementary documents and papers must be referred to in the principal statement in chronological or other appropriate order and be described in such manner that they can be easily identified.)

1. Name of registrant George Sylvester Viereck.

2. Status of registrant (individual, partnership, association, or corporation) individual.

3. Principal business address none.

4. Other places of business in the United States or elsewhere none.

5. Residence address, or addresses, if more than one 305 Riverside Drive, New York City.

6. If registrant is a partnership, names and addresses of partners; if a corporation or association, names and addresses of officers thereof

18 7. Name of foreign principal, or principals, if more than one, for which registrant is acting as agent Munchner Neueste Nachrichten, Dr. Giselher Wirsing, Editor-in-Chief.

8. Address, or addresses, if more than one, of foreign principal Sendlingerstrasse 80, Munich.

9. Nationality of foreign principal, or principals, if more than one German.

10. Nature of business of foreign principal, or principals Newspaper.

11. Comprehensive statement of nature of business of registrant author and journalist.

19 12. Identification of all contracts of employment or other documents submitted herewith to indicate in complete detail the nature of the employment of registrant, and the terms and conditions thereof. If contract is oral, a full statement of the terms and conditions thereof must be submitted herewith and identified herein. Copy of Contract, submitted to Secretary of State on Sept. 9th; another copy attached hereto.

13. The following information must be furnished, whether contract of employment of registrant is written or oral:

(*a*) Dates of contracts under which registrant is employed July 20th, 1939.

(*b*) Dates of commencement of activity thereunder August 1939.

(c) Periods of duration of contracts of employment. (If not known definitely, approximations may be made). One year from date, provided foreign exchange is available; if not, contract expires.

14. Compensation to be paid to, or income to be received by, registrant, and form and time of payment, under contracts or terms of employment, or otherwise. $500.00 monthly. $2,000. received, of which $1,000. covers traveling expenses. $1,000. advance for August and September.

15. Names of all foreign principals, or other persons or organizations which have contributed, do now contribute, or have undertaken to contribute, to compensation referred to in paragraph 14 above. Knorr & Hirth, publishers of Münchner Neueste Nachrichten.

16. If registrant is a partnership, association, or corporation, identify documents and instruments, whether charter, articles of incorporation, copartnership, or association; constitution; bylaws; or other documents or instruments relating to registrant's organization, powers, and purposes, submitted herewith in compliance with the act.

17. (a) Nationality of registrant American.

(b) If American-born, date and place of birth. . . .

(c) If naturalized, date and place of naturalization under father's papers, issued November 15th, 1901. District Court of the U. S. Southern District of New York.

(d) If alien, indicate type of travel document and nature of entry into the United States (whether for business or pleasure, temporary or permanent, etc.), including date, port of entry, type and date of visa, country of origin, country from which entry was made, etc.

18. Official designation of registrant Correspondent of Münchner Neueste Nachrichten in the United States.

19. Date of execution of Registration Statement September 25th, 1939.

The undersigned swears (affirms) that he has read the Act, Public, No. 583, 75th Congress, 3d Session, approved on June 8, 1938, as amended by the Act, Public, No. 319, 76th Congress, 1st Session, approved August 7, 1939, and the regulations issued pursuant thereto; that he is familiar with the contents of this Registration Statement submitted pursuant to such Act and regulations, and with the contents of the documents supplementary thereto which are incorporated therein and constitute a part thereof, and that the facts therein set forth are true to the best of his knowledge, information, and belief.

GEORGE SYLVESTER VIERECK,
(Signature of registrant)
GEORGE SYLVESTER VIERECK.
(Type or Print Name.)

(If registrant is a partnership, association, or corporation, the signature shall be that of its duly authorized representative.)

Subscribed and sworn to before me at New York, this 25 day of Sept., 1939.

GEORGE F. STEERS,
(Title)
Notary Public, N. Y. C. Co. No. 733, Reg. No. 1-S-1018
Cert. filed in Bronx Co. No. 112, Reg. No. 372-S-41
Commission Expires March 30, 1941.

22 TRANSLATION

Münchner Neueste Nachrichten — Munich,
Office of the Editor-in-Chief — Sendlingerstr. 80

CONTRACT

between the Chief Editorial Department of the Münchner Neueste Nachrichten, Munich,

and

GEORGE SYLVESTER VIERECK,
305 Riverside Drive, New York,

the following Agreement has been concluded today:

1). Mr. Viereck assumes the representation of the Münchner Neueste Nachrichten for the United States of North America. He obligates himself in accordance with the general instructions of the Editor-in-Chief of the Münchner Neueste Nachrichten to furnish reports on the general situation, digests of the press, etc. as well as material for publication at regular intervals. Mr. Viereck will furnish at least once a week the above mentioned digests from the press. He will write, at least once a month, one article of a political or economic nature, for publication in the Münchner Neueste Nachrichten.

2). The Münchner Neueste Nachrichten compensate Mr. Viereck at once with the sum of $2000. (read two thousand dollars) and will attend to the transfer of this sum to New York. These $2000. represent traveling expenses and salary for the months of August and September, 1939. Beginning with October, 1939, Mr. Viereck will receive a monthly compensation of $500.—(read five hundred dollars) for the above mentioned services.

3). It is expressly understood by both contracting parties that in case the transfer of dollars to the United

States, owing to the general condition of exchange, should not be possible, either with beginning of October 1939, or at any later date, this contract becomes null and void without further formality.

4). Special expenses for trips will be dealt with and regulated in accordance with mutual agreement.

5). No more oral agreements beyond this contract exist between the two parties and have no validity.

(signed) DR. G. WIRSING, Editor-in-Chief
Münchner Neueste Nachrichten

MUNICH, July 20, 1939.
(signed) George Sylvester Viereck

Attached to this Form by State Department.

21 COPY OF AGREEMENT WITH GERMAN LIBRARY OF INFORMATION

New York, September 27, 1939.

Dr. Heinz Beller,
German Library of Information,
17 Battery Place,
New York City.

Dear Dr. Beller:

In accordance with your request I herewith confirm our verbal agreement:

1). I agree to prepare for "Facts in Review" digests of such material as you place at my disposal from time to time.

2). I shall be glad to prepare such articles interpreting the German point of view based on data furnished by you, as we may from time to time agree upon.

3). I shall hold myself in readiness for editorial consultations with you at mutually convenient times.

4). My compensation will be $500.00, payable monthly in advance.

5). This arrangement may be cancelled by either party on three months' notice.

6). In the, I trust, remote contingency of a break between the United States and Germany, we are both automatically released from any obligation flowing from this agreement.

7). It is also understood, in accordance with your wishes as well as mine, that I shall not be asked to prepare or edit any matter derogatory to the United States, or to undertake any editorial assignment which could possibly conflict with American laws and my duties as an American citizen. I welcome cooperation with you, because I can think of no more important task from the point of view of fair play and the maintenance of peace between your country and mine than to present to the American public a picture, unblurred by anti-German propaganda, of the great conflict now unhappily waging in Europe.

Believe me,

Sincerely yours,

(signed) GEORGE SYLVESTER VIERECK.

AGREED:

Heinz Beller.

23

(Division of Controls
APR 22 1940
Ack. 4/23/40
L H P : kel
Department of State)

Registration No. 367

Date of Registration, Sept. 26, 1939.

(Not to be filled in by registrant).

APR 23 1940

UNITED STATES OF AMERICA

DEPARTMENT OF STATE

SUPPLEMENTAL REGISTRATION STATEMENT

For persons required to submit statements to the Secretary of State for filing in compliance with section 3 of the Act, Public, No. 583, 75th Congress, 3d Session, approved on June 8, 1938, as amended by the Act, Public, No. 319, 76th Congress, 1st Session, approved August 7, 1939.

(Note.—Except in paragraph 1, if answers would be exactly the same as answers made to similar questions in a previous statement filed with the Secretary under the Act of June 8, 1938, the word "same" may be written in the appropriate spaces below with an indication of the number and date of the previous statement filed. All spaces must be filled in.

1. Name of registrant George Sylvester Viereck.

2. Status of registrant (individual, partnership, association, or corporation) Individual.

3. Principal business address Same.

4. Other places of business in the United States or elsewhere Same.

5. Residence address, or addresses, if more than one Same.

6. If registrant is a partnership, names and addresses of partners; if a corporation or association, names and addresses of officers thereof ——

24 7. Name of foreign principal, or principals, if more than one, for which registrant is acting as agent Same.

8. Address, or addresses, if more than one, of foreign principal Same.

9. Nationality of foreign principal, or principals, if more than one Same.

10. Natu. e of business of foreign principal, or principals Munchner Neueste Nachrichten—Same German Library of Information—Refer to Registration Statement #364.

11. Comprehensive statement of nature of business of registrant Same.

12. Identification of all contracts of employment or other documents submitted herewith to indicate in complete detail the nature of the employment of registrant, and the terms and conditions thereof. If contract is oral, a full statement of the terms and conditions thereof must be submitted herewith and identified herein. Same.

13. The following information must be furnished, whether contract of employment of registrant is written or oral:

(*a*) Dates of contracts under which registrant is employed Same.

(*b*) Dates of commencement of activity thereunder Same.

(*c*) Periods of duration of contracts of employment. (If not known definitely, approximations may be made.) Same.

14. Compensation to be paid to, or income to be received by, registrant, and form and time of payment, under contracts or terms of employment, or otherwise. Same.

15. Amount and form of compensation received by registrant during period of 6 months immediately succeeding last statement filed with the Secretary pursuant to the act. Munchner Neueste Nachrichten $3500.00. German Library of Information $3650.00. Extras for additional editing, supervising and for writing prefaces $1,200.00.

16. If registrant is a partnership, association, or corporation, identify documents and instruments, whether charter; articles of incorporation, copartnership, or association; constitution; bylaws; or other documents or instruments relating to registrant's organization, powers, and purposes, submitted herewith in compliance with the act.

26 17. (*a*) Nationality of registrant Same.

(*b*) If American-born, date and place of birth Same.

(*c*) If naturalized, date and place of naturalization Same.

(*d*) If alien, indicate type of travel document and nature of entry into the United States (whether for business or pleasure, temporary or permanent, etc.), including date, port of entry, type and date of visa, country of origin, country from which entry was made, etc. Same.

18. Official designation of registrant Same.

19. Date of execution of Registration Statement September 26, 1939.

The undersigned swears (affirms) that he has read the Act, Public, No. 583, 75th Congress, 3d Session, approved on June 8, 1938, as amended by the Act, Public, No. 319, 76th Congress, 1st Session, approved August 7, 1939, and the regulations issued pursuant thereto; that he is familiar with the contents of this Supplemental Registration Statement submitted pursuant to such Act and regulations and with the contents of the documents supplementary thereto which are incorporated therein and constitute a part thereof; and that the facts therein set forth are true to the best of his knowledge, information, and belief.

GEORGE SYLVESTER VIERECK
(Signature of registrant)

GEORGE SYLVESTER VIERECK.
(Type or Print Name.)

(If registrant is a partnership, association, or corporation, the signature shall be that of its duly authorized representative.)

(Seal)

Subscribed and sworn to before me at New York, N. Y., this 19th day of April, 1940.

EMIL MOROSINI, JR.,
Notary Public, Kings Co. No. 714,
Reg. No. 1356, Cert. filed in N. Y. Co.
No. 937, Reg. No. 1 M 555.
Commission expires March 30, 1941.

28

(Division of Controls
E D K
Oct 25 1940
Ack. 10-25-40
EDK/MJY
Department of State)

Registration No. 367
Date of Registration Oct. 25 1940
(Not to be filled in by registrant)

UNITED STATES OF AMERICA
DEPARTMENT OF STATE

SUPPLEMENTAL REGISTRATION STATEMENT

For persons required to submit statements to the Secretary of State for filing in compliance with section 3 of the act, Public, No. 583, 75th Congress, 3d Session, approved on June 8, 1938, as amended by the Act, Public, No. 319, 76th Congress, 1st Session, approved August 7, 1939.

(NOTE:—Except in paragraph 1, if answers would be exactly the same as answers made to similar questions in

a previous statement filed with the Secretary under the Act of June 8, 1938, the word "same" may be written in the appropriate spaces below with an indication of the number and date of the previous statement filed. All spaces must be filled in.

1. Name of registrant. George Sylvester Viereck
2. Status of registrant (individual, partnership, association, or corporation) Same
3. Principal business address Same
4. Other places of business in the United States or elsewhere Same
5. Residence address, or addresses, if more than one. Same
6. If registrant is a partnership, names and addresses of partners; if a corporation or association, names and addresses of officers thereof - - -

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7. Name of foreign principal, or principals, if more than one, for which registrant is acting as agent Same
8. Address, or addresses, if more than one, of foreign principal Same
9. Nationality of foreign principal, or principals, if more than one Same
10. Nature of business of foreign principal, or principals Same
11. Comprehensive statement of nature of business of registrant Same

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12. Identification of all contracts of employment or other documents submitted herewith to indicate in complete detail the nature of the employment of registrant, and the terms and conditions thereof. If contract is oral, a full statement of the terms and con-

ditions thereof must be submitted herewith and identified herein. Same

13. The following information must be furnished, whether contract of employment of registrant is written or oral:
    (a) Dates of contracts under which registrant is employed Same
    (b) Dates of commencement of activity thereunder Same
    (c) Periods of duration of contracts of employment (If not known definitely, approximations may be made.) Contract with Munchner Nueste Nachrichten has expired but is being continued without specific renewal
14. Compensation to be paid to, or income to be received by, registrant, and form and time of payment, under contracts or terms of employment, or otherwise. Same
15. Amount and form of compensation received by registrant during period of 6 months immediately succeeding last statement filed with the Secretary pursuant to the act.
    Munchner Nueste Nachrichten $3000.00
    German Library of Information $3000.00
    Extras for editorial editing, supervising and for writing prefaces $7650.00
16. If registrant is a partnership, association, or corporation, identify documents and instruments, whether charter; articles of incorporation, copartnership, or association; constitution; bylaws; or other documents or instruments relating to registrant's organization, powers, and purposes, submitted herewith in compliance with the act. - - -

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17. (a) Nationality of registrant Same
    (b) If American-born, date and place of birth Same
    (c) If naturalized, date and place of naturalization Same
    (d) If alien, indicate type of travel document and nature of entry into the United States (whether for business or pleasure, temporary or permanent, etc.), including date, port of entry, type and date of visa, country of origin, country from which entry was made, etc. Same
18. Official designation of registrant Same
19. Date of execution of Registration Statement September 26, 1939

The undersigned swears (affirms) that he has read the Act, Public, No. 583, 75th Congress, 3d Session, approved on June 8, 1938, as amended by the Act, Public, No. 319, 76th Congress, 1st Session, approved August 7, 1939, and the regulations issued pursuant thereto; that he is familiar with the contents of this Supplemental Registration Statement submitted pursuant to such act and regulations and with the contents of the documents supplementary thereto which are incorporated therein and constitute a part thereof; and that the facts therein set forth are true to the best of his knowledge, information, and belief.

(If registrant is a partnership, association, or corporation, the signature shall be that of its duly authorized representative.)

GEORGE SYLVESTER VIERECK
(Signature of registrant)
GEORGE SYLVESTER VIERECK
(Type or print name)

Subscribed and sworn to before me at New York, N. Y., this 24th day of October, 1940.

EMIL MOROSINI, JR.
(Title.)
Notary Public, Kings Co. No. 714, Reg. No. 1356. Cert. filed in N. Y. Co. No. 937, Reg. No. 1 M 555

(Seal) 1 M 555

My commission expires March 30, 1941.

27

COHALAN & MOROSINI
ATTORNEYS AT LAW.
Telephone Cortlandt 7-3434
Cable "Nalahoc"

DANIEL F. COHALAN, JR.
EMIL MOROSINI, JR.

170 Broadway, New York
October 24th, 1940
Department of State
Received
Oct. 29 1940
Division of
(Communications and Records)
(Division of Controls)
(E D K)
Oct 25 1940
ACK. 10-25-40
EDK/MJY
Department of State
October 29, 1940

Department of State,
Division of Controls,
Washington, D. C.

Att: Mr. Charles F. Yost,
Ass't Chief—Div. of Controls

Re: Co 800.01B11
Reg.—George Sylvester Viereck

30

Dear Mr. Yost:

At the direction of Mr. George Sylvester Viereck, I am enclosing to you herewith his supplemental registration statement executed by him the 24th day of October, 1940 to be filed pursuant to the requirements of Section 3 of the Act of June 8, 1938, as amended.

May I call your attention at this time to an inaccuracy in the figures submitted by Mr. Viereck in the supplemental registration statement filed by him on April 20th, 1940. In such statement, he stated that his salary received from the German Library of Information during the past six months had been the sum of $3650.00. This figure should have been $3150.00, Mr. Viereck having by mistake taken the seven month computation instead of the six-month computation.

If there is any additional information which we can give you, we shall be delighted to answer any inquiry addressed to us.

Very truly yours,

COHALAN & MOROSINI,
By DANIEL F. COHALAN, JR.

DFC:JP
Enc.

32

COHALAN & MOROSINI
Attorneys at Law
Telephone Cortlandt 7-3434
Cable "Nalahoc"

DANIEL F. COHALAN, JR.
EMIL MOROSINI, JR.

170 Broadway, New York
March 15th, 1941.

Department of State,
Division of Controls,
Washington, D. C.

Att: Mr. Charles E. Yost

Gentlemen:

We are enclosing to you herewith for filing registration statement of Mr. George Sylvester Viereck, who is registering as the agent of Dr. Giselher Wirsing and Verlag Knorr & Hirth in Germany.

We would appreciate it very much if you would have your office send to us some forms for registration statements and for supplemental registration statements.

Thanking you for this courtesy, we are

Very truly yours,

COHALAN & MOROSINI,
By DANIEL F. COHALAN, JR.

DFC:JP
Enc.

(Division of Controls
EDK
March 17 1941
Department of State
Registration No. .....
Date of Registration .....
(Not to be filled in by registrant)

UNITED STATES OF AMERICA
DEPARTMENT OF STATE

REGISTRATION STATEMENT

For persons required to register with the Secretary of State pursuant to section 2 of the Act, Public, No. 583, 75th Congress, 3d Session, approved on June 8, 1938, as amended by the Act, Public, No. 319, 76th Congress, 1st Session, approved August 7, 1939.

(NOTE.—ALL spaces must be filled in. Where space in the registration statement form does not permit full answers to questions, the information required may be set forth in supplementary papers incorporated by reference in the registration statement and submitted therewith. Supplementary documents and papers must be referred to in the principal statement in chronological or other appropriate order and be described in such manner that they can be easily identified.)

1. Name of registrant George Sylvester Viéreck,
2. Status of registrant (individual, partnership, association, or corporation) Individual
3. Principal business address 305 Riverside Drive, New York City
4. Other places of business in the United States or elsewhere - - -

5. Residence address, or addresses, if more than one 305 Riverside Drive, New York City.
6. If registrant is a partnership, names and addresses of partners; if a corporation or association, names and addresses of officers thereof - - -

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7. Name of foreign principal, or principals, if more than one, for which registrant is acting as agent Dr. Giselher Wirsing and Verlag Knorr & Hirth
8. Address, or addresses, if more than one, of foreign principal Dr. Giselher Wirsing c/o Muenchner Neueste Nachrichten, Muenchen, Germany. Verlag Knorr & Hirth, Muenchen, Germany.
9. Nationality of foreign principal, or principals, if more than one German.
10. Nature of business of foreign principal, or principals Dr. Wirsing is a writer and Editor of the Muenchner Nueste Nachrichten. Verlag Knorr & Hirth is a publishing house in Munich, Germany.
11. Comprehensive statement of nature of business of registrant Author, Editor and Publicist.

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12. Identification of all contracts of employment or other documents submitted herewith to indicate in complete detail the nature of the employment of registrant, and the terms and conditions thereof. If contract is oral, a full statement of the terms and conditions thereof must be submitted herewith and identified herein. Translations of cablegrams establishing employment are affixed hereto. The registrant is employed to act as agent for the editing, publication, advertisement and sale, etc. of a book entitled "The One Hundred Families Who Rule Great Britain", which

was written by Wirsing and published by Knorr & Hirth, and to secure royalty to author.

13. The following information must be furnished, whether contract of employment of registrant is written or oral:
   (a) Dates of contracts under which registrant is employed See cablegrams attached.
   (b) Dates of commencement of activity thereunder In or about 1st week of March, 1941.
   (c) Periods of duration of contracts of employment. (If not known definitely, approximations may be made.) No term fixed.

14. Compensation to be paid to, or income to be received by, registrant, and form and time of payment, under contracts or terms of employment, or otherwise. None. (The sum of $10,000 has been received by registrant, which sum is to be used by him at his discretion to cover publication costs, advertising, publicity, distribution, etc.)

15. Names of all foreign principals, or other persons or organizations which have contributed, do now contribute, or have undertaken to contribute, to compensation referred to in paragraph 14 above. None.

16. If registrant is a partnership, association, or corporation, identify documents and instruments, whether charter; articles of incorporation, copartnership, or association; constitution; bylaws; or other documents or instruments relating to registrant's organization, powers, and purposes, submitted herewith in compliance with the act. - - -

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17. (a) Nationality of registrant American.
   (b) If American-born, date and place of birth.....

(c) If naturalized, date and place of naturalization under father's papers, issued Nov. 15, 1901, District Court of the U. S., Southern District of N. Y.

(d) If alien, indicate type of travel document and nature of entry into the United States (whether for business or pleasure, temporary or permanent, etc.), including date, port of entry, type and date of visa, country of origin, country from which entry was made, etc. .....

18. Official designation of registrant Agent and representative.

19. Date of execution of Registration Statement March 14th, 1941.

The undersigned swears (affirms) that he has read the Act, Public, No. 583, 75th Congress, 3d Session, approved on June 8, 1938, as amended by the Act, Public, No. 319, 76th Congress, 1st Session, approved August 7, 1939, and the regulations issued pursuant thereto; that he is familiar with the contents of this Registration Statement submitted pursuant to such Act and regulations, and with the contents of the documents supplementary thereto which are incorporated therein and constitute a part thereof, and that the facts therein set forth are true to the best of his knowledge, information, and belief.

(If registrant is a partnership, association, or corporation, the signature shall be that of its duly authorized representative.)

GEORGE SYLVESTER VIERECK,
(Signature of registrant)
GEORGE SYLVESTER VIERECK,
(Type or print name)

Subscribed and sworn to before me at New York City, this 14th day of March, 1941.

EMIL MOROSINI, JR.
(Title)
Notary Public, Kings Co. No. 714, Reg. No. 1356. Cert. filed in N. Y. Co. No. 937, Reg. No. 1 M 555.

Commission expires March 30, 1941.

February 11, 1941.

DR. GISELHER WIRSING
MUENCHNER NUESTE NACHRICHTEN
MUNICH GERMANY

Have American Publisher for One Hundred Families. May I act as your representative and secure for you a royalty of ten per cent for every copy sold to the trade? Can you or your publisher remit five to ten thousand dollars for extended advertising and distribution of your impressive work? An American publishing house spent 26,000 dollars in one week to advertise the British Propaganda Novel Ridiculing Americas Struggle for Independence.

VIERECK

February 19, 1941

GEORGE SYLVESTER VIERECK

I authorize you to act as my representative for the book One Hundred Families. I accept your proposition. The clarification of other matters will follow shortly. Regards.

WIRSING.

38 COHALAN & MOROSINI
ATTORNEYS AT LAW

Telephone Cortlandt 7-3434
Cable "Nalahoc"
[Division of Controls
EDK
Apr 25 1941
Ack. 4-29-41
EDK/MJG
Department of State]

Daniel F. Cohalan, Jr.
Emil Morosini, Jr.

170 Broadway, New York
April 24th, 1941.
May 3, 1941.

Department of State,
Division of Controls,
Washington, D. C.

Re: Co 800.01B11 Registration—
Viereck, George Sylvester

Dear Sirs:

We enclose herewith the supplemental registration statement of George Sylvester Viereck covering the period from September 25, 1940 to March 25, 1941.

Pursuant to the suggestion contained in your letter of March 21, 1941, the enclosed statement is intended to cover all of Mr. Viereck's activities on behalf of all foreign principals. We assume, therefore, that it will not be necessary for Mr. Viereck to file a separate supplemental statement in connection with his registration as agent for Dr. Giselher Wirsing and Verlag Knorr & Hirth, and that his supplemental statements filed in April and October will also cover this registration. We shall appreciate it if you will confirm this.

In the past, Mr. Viereck has not reported monies received from the German Library of Information as reimbursement for expenses incurred by him. These monies were not deemed to be compensation and were, therefore, omitted. Mr. Viereck, however, would prefer that his supplemental registration statements include all income including monies received as reimbursement for expenses. We shall appreciate it, therefore, if you will amend Mr. Viereck's supplemental statement filed for the period from September 26, 1939 to March 25, 1940, so that the same will include the sum of $137.00 received from the German Library of Information as reimbursement for expenses incurred. We shall further appreciate it if you will make a similar amendment on the supplemental statement for the period from March 26, 1940 to September 25, 1940 so that the same will show the sum of $1790.43 received from the German Library of Information as reimbursement to Mr. Viereck for expenses incurred by him.

Very truly yours,

COHALAN & MOROSINI
By EMIL MOROSINI JR.
800.01B11 Registration
VIERICK, GEORGE SYLVESTER 137 PS1 VH.,

EM:JP
Enc.

[Division of Controls
E D K
Apr 25 1941

Filed Oct. 1, 1941.

Ack. 4-29-41
E D K/M J G
Department of State]

Registration No. 367
Registration Apr 25 1941
(Not to be filled in by registrant)

UNITED STATES OF AMERICA
DEPARTMENT OF STATE

SUPPLEMENTAL REGISTRATION STATEMENT

For persons required to submit statements to the Secretary of State for filing in compliance with section 3 of the Act, Public, No. 583, 75th Congress, 3d Session, approved on June 8, 1938, as amended by the Act, Public, No. 319, 76th Congress, 1st Session, approved August 7, 1939.

(NOTE.—Except in paragraph 1, if answers would be exactly the same as answers made to similar questions in a previous statement filed with the Secretary under the Act of June 8, 1938, as amended, the word "same" may be written in the appropriate spaces below with an indication of the number and date of the previous statement filed. All spaces must be filled in.)

1. Name of registrant GEORGE SYLVESTER VIERECK
2. Status of registrant (individual, partnership, association, or corporation) Same
3. Principal business address Same
4. Other places of business in the United States or elsewhere Same
5. Residence address, or addresses, if more than one Same

6. If registrant is a partnership, names and addresses of partners; if a corporation or association, names and addresses of officers thereof Same

7. Name of foreign principal, or principals, if more than one, for whom registrant is acting as agent Same

8. Address, or addresses, if more than one, of foreign principal Same

9. Nationality of foreign principal, or principals, if more than one Same

10. Nature of business of foreign principal, or principals Same

11. Comprehensive statement of nature of business of registrant Same

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12. Identification of all contracts of employment or other documents submitted herewith to indicate in complete detail the nature of the employment of registrant, and the terms and conditions thereof. If contract is oral, a full statement of the terms and conditions thereof must be submitted herewith and identified herein. Same except that copy of new contract with German Library of Information is annexed hereto and made a part hereof.

13. The following information must be furnished, whether contract of employment of registrant is written or oral:

(*a*) Dates of contracts under which registrant is employed Same except see new contract with German Library of Information attached hereto.

(*b*) Dates of commencement of activity thereunder Same except see new contract contract with German Library of Information attached hereto.

(c) Periods of duration of contracts of employment. (If not known definitely, approximations may be made.)

Same except see new contract with German Library of Information attached hereto.

14. Compensation to be paid to, or income to be received by, registrant, and form and time of payment, under contracts or terms of employment, or otherwise.

Same except see new contract with German Library of Information attached hereto.

15. Amount and form of compensation received by registrant during period of 6 months immediately succeeding last statement filed with the Secretary pursuant to the act.

Munchner Neueste Nachrichten, including payment of salary in advance to February, 1942 and reimbursement for expenses $8,300.00.

German Library of Information, including reimbursement for expenses incurred $25,504.09.

Dr. Giselher Wirsing and Verlag Knorr & Hirth, none except as reported in statement filed on or about March 17, 1941.

16. If registrant is a partnership, association, or corporation, identify documents and instruments, whether charter; articles of incorporation, copartnership, or association; constitution; bylaws; or other documents or instruments relating to registrant's organization, powers, and purposes, submitted herewith in compliance with the act.

Same

17. (a) Nationality of registrant Same

(b) If American-born, date and place of birth Same

(c) If naturalized, date and place of naturalization Same

(*d*) If alien, indicate type of travel document and nature of entry into the United States (whether for business or pleasure, temporary or permanent, etc.), including date, port of entry, type and date of visa, country of origin, country from which entry was made, etc. Same

18. Official designation of registration Same.

19. Date of execution of Registration Statement September 26, 1939 and March 17, 1941

The undersigned swears (affirms) that he has read the Act, Public, No. 583, 75th Congress, 3d Session, approved on June 8, 1938, as amended by the Act, Public, No. 319, 76th Congress, 1st Session, approved August 7, 1939, and the regulations issued pursuant thereto; that he is familiar with the contents of this Supplemental Registration Statement submitted pursuant to such Act and regulations and with the contents of the documents supplementary thereto which are incorporated therein and constitute a part thereof; and that the facts therein set forth are true to the best of his knowledge, information, and belief.

(If registrant is a partnership, association, or corporation, the signature shall be that of its duly authorized representative.)

GEORGE SYLVESTER VIERECK
(Signature of registrant)
GEORGE SYLVESTER VIERECK
(Type or print name)

Subscribed and sworn to before me at New York City, this 24th day of April, 1941.

JEAN C. PLUTA
(Title.)

(Seal) Notary Public, Kings Co. No. 426, Reg. No. 3191
Cert. filed in N. Y. Co. No. 491, Reg. No. 3P298
Commission expires March 30, 1943.

41 GEORGE SYLVESTER VIERECK
305 Riverside Drive
New York

Telephone
ACademy 2-7030

Cable Address
Viereck—New York

January 25, 1941.

Dear Mr. Schmitz:

We agreed upon my new income in our last conversation, but your absence from town has delayed the execution of our agreement. It is perfectly obvious, as you yourself pointed out, that I am entitled to four or five times the salary I receive at present.

When I was first associated with Facts in Review, its circulation did not exceed a few thousand copies, and you did not print more than four pages a week. Today the circulation is nearly 100,000 and you print 16 pages every week, not to speak of occasional extra numbers. While undoubtedly the lion's share of this success is due to your own editorial guidance, I have some share in the success of the venture.

Facts in Review, together with such literary work as I have from time to time undertaken for you, absorbs nearly my entire time. I am not in the position to keep up my other journalistic activities or to write a book, which I have been planning for several years. I have not, since I undertook the job, had even had one week's vacation. I do not complain of this, for what task could be more pleasant and more stimulating than to work for a better understanding between the land of my birth and the land of my
42 adoption in spite of all obstacles placed in the way of neutrality and fair play? But I need a regular method of compensation to make both ends meet.

You have allocated to me from time to time special remunerations as your literary adviser. Your book ventures

have developed considerably and make constant calls upon my attention. At first it seemed that the illegal British blockade would be limited to political documents from Germany. Now the attempt to strangle the truth and hamper the dissemination of facts extends even to neutral countries and the British embargo applies to the Nine Muses as well.

In view of this development you will be compelled to publish more and more books on this side of the ocean for the benefit of Americans interested in German culture. The Library is beginning to assume the character of a substantial publishing house with an ever increasing list of books. This policy, which enables the arts and sciences to travel without navy cert from Great Britain, imposes necessarily more burdens on both of us.

You asked me what would be an equitable remuneration. After considerable thought, I reached the figure of $2,500. per month, which was the basis of our last conversation. American magazines never pay me less than $500. per article. I have in fact occasionally received considerably more. The work I do in revising and preparing material for Facts in Review is equal to at least four or five articles monthly. For the sum mentioned I shall continue my work for Facts in Review and act as your chief literary adviser on all books sponsored by the Library. It is not appreciably more than I receive at present, all things considered.

43 I need not repeat, because I know that you agree with me heartily, that the stipulations of my contract apply to any new work which I may undertake:

1): It is clearly understood that I am not called upon to do any work which conflicts in any way with my duties as an American citizen.

2). I am not required to sponsor any publication which in any way enhances the tension between the races and religions represented by the divers elements which make up the United States.

3). This agreement may be cancelled by either side on three months' notice.

4). In case the warmongers should succeed in poisoning the relations between your country and mine to such an extent that a rupture of relations takes place, we are mutually and automatically released from all obligations.

Owing to your absence I have not received the full salary for January to which I am entitled under our verbal agreement. I trust this matter, too, will be adjusted as soon as feasible.

Permit me to assure you that it is both a pleasure and an honor to work with you, a man who, like myself, has drawn his intellectual sustenance from German and American sources and who considers no task more sublime than to break down with the battering ram of truth the barriers of hate and misunderstanding which propaganda, abetted by malice and ignorance, attempts to rear between your country and my own, the United States.

Cordially yours,

(signed) GEORGE SYLVESTER VIERECK.

Agreed:

Dr. Matthias Schmitz

46 GEORGE SYLVESTER VIERECK
305 Riverside Drive
New York

Telephone
ACademy 2-7030

Cable Address
Viereck—New York

[Division of Controls
EDK
Ack. 7-12-41
E D K/M J G
Department of State]

July 9th, 1941.
July 16, 1941

State Department,
Division of Controls,
Washington, D. C.

Dear Sirs:

This is to advise you that my agreement with the German Library of Information has been cancelled and my association therewith terminated. Will you be good enough to make the proper notation upon my registration statement.

In connection with the termination of my agreement, I have received the following payments: Three months salary totalling $7500.00 due and payable upon the cancellation of the contract as per its terms; for writing preface and editing book on Social Security and Labor Legislation in Germany $500.00; for reimbursement for salary for Erick Posselt $350.00; for reimbursement for payment to Erick Posselt for writing book on the Graphic Arts $400.00.

Over and above this, the German Library of Information has given me additional compensation in the sum of $3500.-00 to enable me to meet my needs until such time as I may obtain new employment. Attached herewith are copies of the agreements with respect to the aforesaid payments.

Very truly yours,
GEORGE SYLVESTER VIERECK

Encls.

New York City, July , 1941.

Mr. George Sylvester Viereck,
305 Riverside Drive,
New York, N. Y.

Dear Mr. Viereck:

Since we have to close the Library, it has been of course necessary to cancel our agreement with you. When we made this agreement we looked forward to an association for a long period of time. Unfortunately, this association has been terminated sooner than anticipated. I realize full well that it will be difficult, if not impossible for you to obtain in the very near future employment which will afford you sufficient compensation to meet your needs. I am not only grateful for the excellent service which you have rendered us, but I at the same time would like to assist you to the extent of making some provision to enable you to get along until such time as you can find other employment. I, therefore, would like to offer, and I wish you to consider this letter as a specific offer, the sum of 3 500.-$. I sincerely trust that you will see fit to accept this offer and I shall appreciate it if you will communicate with me in connection with this immediately.

With warm regards, I am,

Sincerely yours,

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48 Agreement made this second day of July 1941 by and between George Sylvester Viereck and Dr. Matthias F. Schmitz as director of the German Library of Information.

I. Viereck hereby acknowledges receipt of the sum of $2500.- representing payment to him of his salary for the month of July 1941 under his agreement with the Library

to act as literary adviser. Inasmuch as the Library has been ordered by the U. S. Government to close and cease operating in this country the agreement between Viereck and the Library covering Viereck's employment as literary adviser for the Library is deemed cancelled as per its terms and Viereck hereby further acknowledges receipt of the sum of $7500.- representing salary for three months which sum is payable upon the cancellation of the contract and under the terms of the contract.

II. Payment is hereby further made and the receipt thereof is hereby acknowledged by Viereck of the following items:

For writing preface and editing book on Social Security and Labor Legislation in Germany which services were extra services rendered by Viereck ..... $500.

For reimbursement for salary for Erick Posselt. . $350.

For reimbursement for payment made to Eric Posselt for writing a book on the graphic arts. . . $400.

III. It is understood and agreed upon the receipt of the aforesaid payment by Viereck that same will constitute payment in full by the Library to Viereck for any and all obligations due and owing to him for any and all services rendered by him to the Library.

MATTHIAS F. SCHMITZ,
Director of the German
Library of Information.
FW 41

Demurrer.

49 Now comes George Sylvester Viereck, the defendant herein, by his attorneys of record, and, with leave of the Court first had and obtained, withdraws his plea of

not guilty heretofore entered herein to each count of the indictment and the whole thereof and demurs to each count of the indictment and the whole thereof or in the alternative moves to dismiss each and every count of the indictment upon the following grounds:

1. That the said indictment fails to charge any violation of a Statute enacted by Congress or regulation of the head of a department the violation of which is made punishable by any act of Congress.

2. That the omissions allegedly made by the defendant in his registration and supplemental statements do not constitute a violation of the Statute and the regulations.

3. That the regulation which it is alleged the defendant violated is void and in violation of the Fifth and Sixth Amendments of the Constitution of the United States.

4. That the omissions of fact alleged in the indictment do not constitute omissions of material facts within the meaning of the Statute.

5. That Congress has not made the violation of the rules, regulations and forms authorized to be prescribed by the Secretary of State a penal offense.

6. That the regulation which it is charged the defendant has violated changes the standard of guilt prescribed by the Statute, and is, therefore, void and of no force and effect and is in violation of the Fifth and Sixth Amendments of the Constitution of the United States.

7. That the provisions of the Statute and regulation in question do not prescribe an immutable or ascertainable standard of guilt and leave such standard to the variant views of the different courts and juries which may be called on to enforce it, in violation of the Fifth and Sixth Amendments of the Constitution.

8. That the provisions of the Statute and regulation in question are so vague, indefinite, uncertain and wanting in

standard of criminality as to constitute a mere delegation by Congress of legislative power in violation of the Fifth and Sixth Amendments of the Constitution of the United States.

9. That the said indictment does not state facts sufficient to constitute a crime against the United States.

51 WHEREFORE, the defendant demands judgment dismissing the indictment and discharging him from custody.

DANIEL F. COHALAN, JR.,
170 Broadway,
N. Y. C.,
EMIL MOROSINI, JR.,
170 Broadway,
N. Y. C.,
Attorneys for Defendant.

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52 State of New York, }
County of New York. } ss.:

GEORGE SYLVESTER VIERECK, being duly sworn, deposes and says that he is the defendant above named.

That the within affidavit is submitted in support of defendant's alternative motion to dismiss the indictment and each and every count thereof.

That the grounds for the within motion are as follows, to-wit: That in the great majority of the registration and supplemental registration statements filed with the Secretary of State pursuant to the Act of June 8, 1938, as amended, the answer to question 11 of such forms, namely, "Comprehensive Statement of Nature of Business of Registrant" is contained in general and categorical terms; that in accepting such statements as aforesaid, the Secretary of State has established a rule and standard of interpreta-

tion of said requirement, namely, "Comprehensive Statement of Nature of Business of Registrant", such interpretation being that a general and categorical statement of the nature of the registrant's business is sufficient. That in the registration and supplemental statements filed
53 with the Secretary of State by deponent, with which deponent is charged with certain omissions in the indictment herein, comply in all respects with the interpretation established by the Secretary of State in connection with the aforesaid requirement.

WHEREFORE, deponent respectfully prays that the indictment and each and every count thereof be dismissed and that deponent be discharged from custody.

GEORGE SYLVESTER VIERECK.

Sworn to before me this
23 day of October, 1941.
Jean C. Pluta,
Notary Public, Kings Co. No. 426, Reg. No. 3191,
Cert. filed in N. Y. Co. No. 491, Reg. No. 3P298,
Commission expires March 30, 1943.
(Seal)
Daniel F. Cohalan, Jr.,
Emil Morosini, Jr.,
Attorneys for Defendant.

Order.

54 The demurrer of the defendant, George Sylvester Viereck is sustained with respect to Counts #1 and #4 of the indictment herein and is denied with respect to the remaining counts of the aforesaid indictment.

T. ALAN GOLDSBOROUGH,
Judge.

55

Motion for a Bill of Particulars.

Now comes the defendant, George Sylvester Viereck by Daniel F. Cohalan, Jr., and Emil Morosini, Jr., the attorneys of record and moves for a bill of particulars of the above described indictment particularly setting forth the following:

1. The names of the persons with whom it is alleged that defendant advised, consulted and informed as stated in Count 2, paragraph 3a and Count 3, paragraph 3a.

2. The dates when and the places where the defendant is alleged to have advised, consulted and informed with said persons.

3. The substance of the alleged advice, consultation and information.

4. Exact copies of the written information and matters and the substance of the oral information and matters which it is alleged that defendant placed and disseminated as set forth in Count 2, paragraph 3b and Count 3, paragraph 3b; exact copies of speeches, public addresses and written matter referred to therein; a description of the books, periodicals and newspapers in which said matter was alleged to have been printed and published and
56 the dates of publication of each; identify the issue or issues of the Congressional Record in which it is alleged that said matter was published; identify and describe the radio broadcast through which said matter is alleged to have been disseminated, giving the date or dates of each broadcast.

5. The name of every person whom defendant is alleged to have aided and assisted in organizing and setting up the Committees known as "Make Europe Pay War Debts Committee' and "War Debts Defense Committee"

and "Islands For War Debts Committee; the extent to which the defendant is alleged to have assisted in the organization of these committees; a statement of the exact amount alleged to have been contributed by the defendant to each of these Committees; a description of the oral and written information and matters which it is alleged the defendant planned to publish and disseminate through each of these committees.

6. Exact copies of the written and printed matters, articles and essays which it is alleged the defendant wrote, edited, prepared and revised and which it is further alleged that defendant published and distributed in magazines and other publications under false and fictitious names as set forth in count 2, paragraph 3d, Count 3, paragraph 3f and Count 5, paragraph 3f; in connection with said paragraphs of the indictment state also each article or written matter which it is alleged the defendant wrote and published under each of the respective fictitious names set forth in each of the aforesaid paragraphs.

7. Exact copies of the speeches and public addresses delivered on the floor of the Congress and elsewhere by present and former members of both Houses of the Congress of the United States which it is alleged de-
57 fendant planned to distribute by mail under the Congressional Franking privilege.

8. Exact copies or otherwise describe and identify the written information and matter alleged to have been placed for publication by the defendant through the medium of Flanders Hall, Inc.; exact copies or otherwise describe and identify the manuscripts and written and printed matter alleged to have been furnished by the defendant to Flanders Hall for publication, distribution and for sale.

9. State which of the books, pamphlets, manuscripts or other written material are alleged to have been transla-

tions or adaptations either in whole or in part from matter issued and distributed by and through the Deutsche Informationsstelle, Berlin, Germany.

10. Exact copies or otherwise describe and identify the written matter which it is alleged that defendant inserted, printed and published in whole or in part in the Congressional Record and which it is further alleged was published in whole and in part by Flanders Hall, Inc.

11. The persons with whom it is alleged the defendant consulted, conferred and advised in connection with speeches, public addresses, radio broadcasts, manuscripts, etc. as set forth in Count 5, paragraph 3b, including the dates thereof and the substance of each consultation, conference and advice.

12. State whether the facts which it is alleged defendant omitted to include in his supplemental registration statement and which are set forth in the indictment con-
58 stitute "activities" or "business".

13. State whether it is claimed that the acts set forth in the indictment were done by defendant independently or as an agent of either or all of the foreign principals mentioned in the indictment; state which of the allegations of the indictment relate to the agency of the defendant for any or all of the foreign principals mentioned in the indictment.

DANIEL F. COHALAN, JR.
170 Broadway, N. Y. C.

EMIL MOROSINI, JR.
170 Broadway, N. Y. C.
Attorneys for Defendant.

59

Motion for Change of Venue and Other Relief.

Comes now GEORGE SYLVESTER VIERECK, by his counsel, and without waiving any of his objections heretofore stated in the form of motions to the indictment in this case or his plea of not guilty thereto and expressly reserving and reasserting all such objections, says:

1. That on October 8, 1941, when he was arrested in New York City by reason of the indictment in this case and held for removal to the District of Columbia, William Power Maloney, Special Assistant to the Attorney General of the United States, representing the plaintiff, in open court before Honorable Samuel Mandelbaum, United States District Judge for the Southern District of New York, hearing an application for reduction of bail of the defendant, served notice that the Attorney General of the United States wanted a speedy trial of the defendant.

2. That on October 10, 1941, in open court before Mr. Justice James W. Morris of this Court, upon the arraignment of the defendant, the said William Power Maloney again served notice that the Attorney General of the United States wanted a speedy trial of the defendant and requested that the Court instruct the attorneys for the defendant that no delay on their part would be tolerated. Such request that the Court so instruct the attorneys for defendant was made without any basis in fact that the attorneys for defendant had, or intended to delay the trial of the

60 case and was apparently made in an attempt to intimidate defendant and his counsel.

3. That on November 3, 1941, defendant's counsel argued before Mr. Justice T. Alan Goldsborough of this Court a demurrer to the indictment which the Court sustained as to counts 1 and 4 of said indictment. At this time and after the Court had rendered its decision, the

said William Power Maloney, representing the plaintiff, again in open court stated that the Attorney General wanted a quick trial of this case and specifically requested the Court to set the case down for trial before him, Mr. Justice Goldsborough, on November 17, 1941. Defendant's attorneys advised Mr. Justice Goldsborough that under no circumstances could the defendant be ready for trial on said date, and Mr. Justice Goldsborough stated that he was not free on November 17th but that he could commence the trial of the case on January 5, 1942, and that he would set the case for trial before him on that day. Defendant's attorneys agreed to be ready to commence the trial on January 5, 1942, and the said William Power Maloney sarcastically stated in answer to defendant's counsel that he, Mr. Maloney, suspected it would be satisfactory to defendant's counsel and directly accused defendant's counsel of deliberately attempting to delay the trial of the case, which accusation was then and there denied by defendant's counsel. Mr. Justice Goldsborough then again stated that he could not take the case for trial before January 5, 1942, and that if a trial before said date was so urgent, some other Justice of the Court should be consulted.

4. That on November 10, 1941, when the defendant was rearraigned before Mr. Justice Morris (the plea on the prior arraignment of October 10, 1941, having been withdrawn for purposes of the aforesaid demurrer) the said William Power Maloney, attorney for plaintiff, requested that Mr. Justice Morris set the case down for trial on January 12, 1942, before Mr. Justice F. Dickinson Letts of this Court. Defendant's counsel objected that the case had been theretofore, to wit, on November 3, 1941,

61 set down for trial before Mr. Justice Goldsborough commencing January 5, 1942. The said William Power Maloney stated to Mr. Justice Morris that his, Mr. Ma-

loney's information was that Mr. Justice Goldsborough was no longer free to take the case on January 5, 1942, and repeated his, Mr. Maloney's, statement that the first available date was January 12, 1942. Mr. Justice Morris thereupon set the case down for trial commencing January 12, 1942, before Mr. Justice Letts, without prejudice to any subsequent application by the attorneys for defendant.

5. That on November 18, 1941, one of defendant's counsel submitted to Mr. Justice Goldsborough an order on his ruling on the demurrer, and Mr. Justice Goldsborough then stated that he had been continuously free since November 3, 1941, and that he would be free to take the defendant's case for trial commencing January 5, 1942, and that any statements to the contrary made by William Power Maloney, attorney for plaintiff, before Mr. Justice Morris was evidently erroneous. Defendant's counsel, Mr. Cohalen, then communicated with the said Mr. Maloney and the two of them appeared before Mr. Justice Morris, at which time defendant's said counsel moved that the case be set down for trial commencing January 5, 1942, before Mr. Justice Goldsborough as the date on which Mr. Justice Goldsborough had stated on November 3, 1941, and reaffirmed on November 18, 1941, that he could commence the trial. Mr. Justice Morris thereupon stated that the matter of assignment of the case should be taken up with Mr. Justice Letts or Mr. Justice Goldsborough. Thereafter and on November 21, 1941, defendant's counsel received a radiogram at their New York office, purporting to be signed by Honorable Wendell Berge, Assistant Attorney General of the United States, stating that the defendant's case had been set down for trial commencing January 5, 1942, before Mr. Justice Letts.

6. That defendant's counsel are informed and verily believe that Mr. Justice Letts advised Mr. Justice

62 Goldsborough that he, Mr. Justice Letts, had not agreed to try the defendant's case and would not agree to do so at any time.

7. That defendant's counsel were advised that Mr. Justice Goldsborough would commence the trial of the defendant's case on January 21, 1942, and on January 19, 1942, his counsel appeared before Mr. Justice Goldsborough to argue certain motions for suppression of evidence, for bill of particulars, for delay in the trial of the case on the ground that defendant could not secure a fair trial in this jurisdiction at this time; and that in event of denial of the motion for postponement, that there be granted a motion challenging the entire panel of jurors summoned for the then term of court. At this time and before said motions could be argued by defendant's counsel, the said William Power Maloney, plaintiff's counsel, filed pursuant to Title 28, Section 25, U. S. Code, an affidavit of bias and prejudice by Mr. Justice T. Alan Goldsborough against the plaintiff, a copy of which is attached hereto and made a part hereof to all intents and purposes as if it were quoted in its entirety herein.

8. That the said Mr. Justice Goldsborough refused January 19, 1942, to admit that he was biased or prejudiced against the plaintiff and stated in open court that:

"The Court feels that in view of what has taken place today it might be proper for the Court to make a statement of the situation.

"Some time, I think, late in November there was an order passed which imposed upon the Judge presiding in the Criminal Court No. 1 the duty of assigning criminal cases.

"The Government counsel had notice of that general term order.

"One reason the order was passed was because of what appeared to be the custom of the representatives of the Department of Justice to go from one judge to another with the same case, go from one judge to another judge, and then maybe to another judge, and the Court had no desire to embarrass the Department of Justice in any way but they thought the best thing
63 to do was simply to pass an order to make that sort of a practice impossible.

"Now, I think on the day after the order was passed Mr. Maloney came to me and said that he would like to have the Hill case set down for trial.

"The Court set down a day—I think it was the 3rd of December—for a hearing of the motion set down in the Hill case, and the Government had wanted the Hill case tried in December.

"Mr. O'Connor, who was counsel for the defendant, said he would not be ready on the indicated date—I think it was December 8—and asked that it be set for the following week.

"I called attention to the fact that if it were set for the following week the case would undoubtedly have to be suspended for the Christmas recess, and Mr. Maloney then called attention to the fact that the Viereck case was set already for January 12—I think January 12.

"The Court then said, 'Well, what I will do is this'—it was finally agreed to—'I will set the Hill case for January 7 and as soon as the Hill case is over I will set the Viereck case. I can not set the Viereck case until the Hill case is over because I don't know when it will be over.'

"That is what took place at that time.

"Now, prior to the Christmas recess Mr. Justice Letts was designated as the Judge to try the Hill case and we understood that he was not to try the Viereck case.

"We had a consultation with the counsel for the Government on last Thursday.

"I consulted with Justice Letts.

"Counsel had told me that Justice Letts had set the Viereck case down for February 2nd.

"Justice Letts told me that he not only had not set the Viereck case down for February 2nd but that he had told counsel for the Government that he was not to try the case. He said, however, that he remembered that counsel for the Government did say to him on one occasion that the Government said it had been
64 set for February 7th and that was the extent of his knowledge.

"When the demurrer was heard on the Viereck case, which my notes show was the 3rd of November—I think that is correct—Mr. Maloney at that time was intensely anxious to try the case within the next few days. He was very vehement at that time as to the deferment of defense counsel; it was an attempt on the part of the defense not to have the case tried in December, and he was very anxious for the Hill case to go on so the Viereck case could immediately follow it on January 12th.

"Well, this court knew, naturally, that what the Government would want would be the Viereck case tried immediately after the Hill case was tried because the Government's attitude throughout had been a trial as soon as possible, and when the Court was told that Justice Letts had set the case for February 2nd I was astounded.

"Now, of course, this Court and no other Court that has its duty properly in mind is arbitrary.

"I am very certain that I have never been arbitrary but when the time comes, in violation of a known rule of the courts, counsel takes it upon himself to fix a date as to any judge of the Criminal Court, there is only one thing you can do in order to have orderly procedure and that is to set the case down for trial.

"On Thursday afternoon I asked Mr. Maloney, I said, 'If Wednesday does not suit you, when would suit you the second best?' And the 2nd of February 2 as the last word.

"I said to him, 'Well, I have an anti-trust case which begins on the 4th of February, and you simply can not handle the matter that way. The situation is this: After that general order was passed early in December, when the criminal docket was behind—every effort had been made to bring it up to date, and it has been brought up to date, and we have the situation; we have three criminal judges. Now, the plan was for me to take this Viereck case, which would probably carry me on until the end of this month, and then take
65 the anti-trust case, and see if the other two judges could not try the routine business, and if that transpired, after the anti-trust case was tried, we would simply have two criminal judges sitting through and the other criminal judge would go into civil court.

"Now, that is all there is about it and there isn't anything else about it—not anything else about it."

9. At the conclusion of the hearing on January 19, 1942, Mr. Justice Goldsborough stated that he knew of no reason why the case should not be tried on Wednesday, January 21, 1942, and defendant's counsel left during the evening of January 19th for his home in New York City

with the understanding that the trial would commence before Mr. Justice Goldsborough on January 21, 1942, as stated by said Justice.

10. That on January 20, 1942, defendant's counsel were advised by Mr. Justice Goldsborough via long distance telephone that the said William Power Maloney, plaintiff's attorney, had agreed to withdraw the affidavit of bias and prejudice aforesaid and not press proceedings before the United States Court of Appeals for the District of Columbia for a writ of prohibition or other writ directed against Mr. Justice Goldsborough to prevent him from trying the defendant's case at any time, including Wednesday, January 21, 1942, as aforesaid and that the said Mr. Justice Goldsborough had agreed not to try the case and to reassign it to some other Justice of the District Court of the United States for the District of Columbia. All of which took place in the absence of counsel for the defendant.

11. That the said William Power Maloney was seen by defendant's counsel in conversation, after most if not all of the hearing had in this case, with a reporter for the *Washington Post*, a daily morning newspaper of wide circulation in the District of Columbia, and that there was published in said newspaper, news stories on January 20 and 21, 1942, copies of which are attached hereto and made a part hereof, giving an inaccurate, incomplete and
66 prejudicial account of what took place in the court before Mr. Justice Goldsborough, and there was also published in the said *Washington Post* an editorial in the issue of Wednesday, January 21, 1942, a copy of which is attached hereto, and which is likewise inaccurate, incomplete and prejudicial to the defendant. Defendant's counsel is informed and believes that similar news stories concerning these proceedings were published on January

20 and 21, 1942, in other newspapers of wide circulation in the said District of Columbia. All of which tends, and, as defendant verily believes, was intended to overawe the Court and to prejudice the minds of any possible jurors before whom the defendant could be tried in the District of Columbia.

WHEREFORE, the premises considered, the defendant says that he cannot secure a fair trial in the District of Columbia at this time and he prays this court:

1. That he be granted a change of venue and that the trial of the case be transferred to the United States District Court for the District of Maryland at Baltimore, Maryland, or to the United States District Court for the Eastern District of Virginia at Norfolk, Virginia.

2. That if the foregoing prayer be denied, that the trial of this case be postponed until some subsequent term of court so that any hostility engendered against him by reason of the facts aforesaid, and particularly by the acts of the said William Power Maloney, may have time to disappear.

3. That in event both of the foregoing prayers are denied, there be rescinded and set for naught any attempt to withdraw the affidavit of prejudice filed as aforesaid in this case and that there be set aside and held for naught any agreement or action whatsoever to have this case tried before any Justice other than as reaffirmed in the proceedings of January 19, 1942 in this case.

4. Also, that, in any event, William Power Maloney and all other agents and officers of the United States be enjoined and restrained from giving interviews, releases or holding conferences with representatives of the press concerning this case, before, after or during the daily progress of the trial of said case, and in making this prayer defendant further says that he has no ob-

67

jection to the press reporting the trial as it actually takes place in the court-room.

Further defendant sayeth not.

DANIEL F. COHALAN, JR.
EMIL MOROSINI, JR.,
Attorney for Defendant.

Service of a copy hereof this January 22, 1942, is hereby acknowledged.

WILLIAM POWER MALONEY,
Special Assistant to the Attorney General of the United States.

68

Affidavit of Personal Bias and Prejudice of Judge T. Alan Goldsborough.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA.

UNITED STATES OF AMERICA, v. GEORGE SYLVESTER VIERECK.	Criminal No. 68584.

City of Washington,
District of Columbia, } ss.:

I, WILLIAM POWER MALONEY, being duly sworn, depose and say:

I am Special Assistant to the Attorney General of the United States of America, employed by the Department of Justice of the United States, having been appointed and qualified to act as such and as attorney of record for the Government in the above entitled cause, and I am making

this affidavit for and on behalf of the plaintiff herein, acting under the authority and direction of the Attorney General of the United States of America.

That the Honorable T. Alan Goldsborough, the District Judge, who has assigned this case to himself for trial, has a personal bias or prejudice against the Government of the United States of America in this case. The facts and reasons for your deponent's belief that the said Justice T. Alan Goldsborough is biased and prejudiced against the Government of the United States in this case are as follows:

Prior to November 10, 1941, I conferred with the Honorable Edward M. Curran, United States Attorney for the District of Columbia for the purpose of finding out from him the condition of the trial calendar and what Justice of this Court would be available for the trial of this case.

69 At that time I was told by Mr. Curran that because Justice T. Alan Goldsborough was presiding at the trial of the case of United States of America v. United States Gypsum Company, *et al.*, which case was expected to last into February or March of 1942, and Justice James Morris would be engaged with important cases already assigned to him for trial, Justice F. Dickinson Letts was the only Justice of this Court available to hear this case.

I conferred with Justice F. Dickinson Letts the same day and was assured by him that he would be available for the trial of this case some time during the early part of January, 1942.

On November 10, 1942, I appeared before Justice Morris at the re-arraignment of the defendant, George Sylvester Viereck, and requested that this case be set for trial before Justice F. Dickinson Letts on January 12, 1942. Daniel F. Cohalan, Jr., Counsel for the defendant, did not

oppose the trial date, but did make strenuous representations to the Court without showing any legal basis therefor that he preferred that this case should be tried before Justice Goldsborough and not before Judge Letts. After hearing both sides Justice Morris set the case for trial before Judge Letts on January 12, 1942.

Thereafter on December 3, 1941, I appeared as counsel for the Government in the case of United States v. George Hill before Justice T. Allan Goldsborough and asked that the trial of that case be set for December 8, 1941. Defense counsel suggested that the trial be put off until the first week in January of 1942, and I pointed out to the Court that inasmuch as the case of George Sylvester Viereck, in which I was also counsel for the Government, was set before Justice F. Dickinson Letts on January 5, 1942, I could not agree to putting over the Hill case until the first week in January 1942 unless the continuance of the Hill case was conditioned upon Justice Letts agreeing to continue the case against George Sylvester Viereck until after the disposition of the Hill case. The Court
70 thereupon continued the Hill case until January 7, 1942, with the express understanding and agreement reached in open court that if Judge Letts was not agreeable to continuing the Viereck case until after the trial of the Hill case, we would come back before the Court and the matter would be disposed of in some other fashion.

A half an hour later on the same day, December 3, 1941, I conferred with the Honorable F. Dickinson Letts and apprized him of what transpired before Judge Goldsborough and asked Judge Letts if he were agreeable to continuing the Viereck case until early in February 1942. After examining his calendar Judge Letts stated that such a move was agreeable to him, and suggested February 2, 1942, as the date of the trial for the Viereck case.

Thereafter counsel for the defendant, George Sylvester Viereck, were apprized of the fact that the Viereck trial had been continued from January 5 to February 2, 1942, and they agreed to be ready for trial on February 2, 1942.

Your deponent was counsel for the Government in the trial of United States v. George Hill, which commenced before the Honorable F. Dickinson Letts on January 7, 1942, and concluded with a verdict of guilty on Thursday, January 15, 1942. Within a few minutes after the jury had returned its verdict in the afternoon of January 15, 1942, I was informed by my associate Government counsel, Edward J. Hickey, Jr., that he had received a message from Judge Goldsborough to the effect that unless Mr. Hickey and I appeared before Judge Goldsborough forthwith he would set the Viereck case down for trial without consulting us.

On January 15, 1942, between 2:30 and 3:00 P. M., Mr. Hickey and I arrived at the Chambers of the Honorable T. Alan Goldsborough. Judge Goldsborough announced his reason for sending for me was to set a date for the trial of the Viereck case. I told Judge Goldsborough that I was surprised at this statement, and that I had been under the impression that the case had already been set
71 for trial before Justice Letts on February 2, 1942.

Justice Goldsborough said that so far as he was concerned the Viereck case never had been set for trial before Justice Letts, and that he would not set the case down for trial on Monday, January 19, 1942, at 10:00 A. M. Justice Goldsborough abruptly demanded to know if the Government would be ready at that time.

I told Justice Goldsborough that the Government could not be ready on such short notice and protested that the Government's case against Viereck was an involved one and of such importance to our nation as to warrant most

careful preparation on the part of the Government * * * that in my judgment three days was far too short a time in which to prepare adequately * * * that I had relied on the trial date of February 2, 1942, as indeed I felt I had every right so to do; that counsel for both parties had agreed to February 2 as a trial date; that the defendant was at liberty on bail; that I could see no reason, nor had the Court advanced any, for this sudden rush to get the case tried * * * that lacking some reason for the great haste the Court's action seemed arbitrary * * * that no one would be prejudiced by adhering to the original trial date, which was only twelve days later than that which the Court wished to set; that on the other hand the Government would be placed in a most hazardous position should it be forced to start the trial on such short notice.

Thereupon Justice Goldsborough shouted "I don't give a *** *** about the Government's position. This case goes to trial not later than Wednesday, January 21, 1942, and I am going to try it. You might as well get it through your head once and for all that no other Judge in this Court can try this case except me, and the trial will start on Wednesday, whether the Government is ready or not. I direct the Government to be ready to start this trial
72 on Wednesday at 10 o'clock."

I pointed out to Justice Goldsborough that I had just finished a seven-day trial; that I did not know whether the Government's witnesses were available or in what state their health might be, and hence I could not even state at this time whether it would be possible, laying aside other reasons, for the Government to be ready on January 21, 1942.

Thereupon Justice Goldsborough said: "That's a lot of ——— ——— nonsense. I have been trying cases for forty years and I know all about trials. The Government is just stalling. This case will go to trial on January

21, or else." I asked Justice Goldsborough "Or else what?" He replied "You just wait and see." Throughout the entire interview, which lasted some fifteen minutes, Justice Goldsborough's attitude was arbitrary, tyrannical and unreasonable.

It was pointed out to Justice Goldsborough by Mr. Hickey in my presence that as a result of the Hill trial the Government had come into the possession of evidence against Viereck which had not theretofore been available to it, and it would require some time to interview witnesses in connection therewith.

Justice Goldsborough refused to permit me to state fully at any time my reasons for adhering to the original trial date. His language was most abusive throughout the entire interview, and the interview wound up with Justice Goldsborough's shouted assertion that the "case would either be tried on January 21, 1942, or it won't be tried for at least three months," and that he didn't "give a ——— what the public interest" was in the case, and what necessity there was that the case should be tried with reasonable dispatch. I asked the direct question of Justice Goldsborough as to why, since the defendant was agreeable to February 2, 1942, as the trial date, the case could not be tried on that date, and he replied that he had been assigned
73 to an anti-trust case, commencing on February 6, 1942, and that if he permitted the Viereck case to commence on the second of February, he could not hear it. Thereupon I suggested that if he (Judge Goldsborough) would not be available on that date, there might be other Judges who would be available at that time.

In reply, Judge Goldsborough shouted: "Get this into your head. I am going to try this case, and no one else". He further said: "I direct you to be ready on January 21, 1942, and I don't want to hear anything more about the Government's case being prejudiced".

At about 9:35 A. M. on January 19, 1942, Mr. Hickey and I again went to the Chambers of the Honorable T. Alan Goldsborough and pointed out to him that the Government's case against the defendant, Viereck, would be seriously prejudiced if the trial commenced on January 21, 1942, and that the nature of the case, involving as it does a violation of the Foreign Agents Registration Act by a man who is accused of being an agent of a Goverhment with which we are now at war, warranted and required that the Government exhaust every possible avenue, search down every clue of evidence and develop its case against Viereck to the fullest possible extent before proceeding to trial. I pointed out to Judge Goldsborough that the grand jury, which had brought the indictment against Viereck, was still sitting and that numerous witnesses who had come to the Government's attention in recent weeks were scheduled to appear before that body this week; that it was anticipated that the testimony of these witnesses would be of vital importance in the case against Viereck, and that for such reason, among others, the Government again requested that the case proceed to trial upon the original date of February 2, 1942. Judge Goldsborough repeated in substance his remarks of January 15, 1942, and told me that "If Government counsel is not ready on Wednesday, I'll appoint someone else to represent the Government".

74 I stated to Judge Goldsborough that such a move in such an involved case would amount to a denial to the Government of its right of proper representation in the Court, and that it would seriously prejudice the Government in the trial of this litigation. I told Judge Goldsborough that the Government, as a party to this litigation, is entitled to consideration equally with any other party, and that the ends of justice required that the

trial start not earlier than February 2, 1942. Judge Goldsborough replied: "I don't care whether the Government's case is prejudiced or not. Get this into your head, this case will be tried Wednesday at 10:00 AM, whether the Government is ready or not, and I will be the Judge presiding. The interview is at an end".

That for the foregoing reasons your affiant, WILLIAM POWER MALONEY, does believe that the Honorable T. Alan Goldsborough is personally biased and prejudiced against the Government of the United States in this case, as indicated by the statements quoted hereinabove, and by the recitation of the facts and circumstances surrounding the setting of January 21, 1942, as the date for the trial of this case and is, therefore, not a suitable Judge to try this case fairly and impartially and that he should, therefore, be disqualified and another Judge designated to try the said cause.

The reason why this affidavit was not filed ten days before the beginning of the term of this Court, as required by statute, is that the actions and matters therein set forth did not come to the attention of your deponent until after the term of Court had commenced, to-wit: January 15, 1942 and January 19, 1942.

Your deponent further states that this motion is not made for vexation and delay but that justice may be done and because your deponent believes the facts here-
75 in stated to be true. And further deponent sayeth not.

WILLIAM POWER MALONEY,
Special Assistant to the Attorney General.

Subscribed and sworn to before me this
19th day of January, 1942, A. D.

....,
Notary Public in and for the
District of Columbia.

Certificate of Counsel of Record for Plaintiff.

William Power Maloney, Special Assistant to the Attorney General, counsel of record for the plaintiff, the United States of America, in the above case, hereby certifies that he is such counsel of record for the plaintiff in the above-entitled cause and that this application is made in good faith.

WILLIAM POWER MALONEY,
Special Assistant to the Attorney General and Counsel of Record for the Plaintiff.

January 19, 1942.

Service of a copy of the above affidavit is this day duly acknowledged.

....,
Attorney of Record for Defendant.

76 **Defendant's Exhibit 52.**

GEORGE SYLVESTER VIERECK
305 Riverside Drive
New York

September 20, 1939

TELEPHONE
ACADEMY 2-7030

CABLE-ADDRESS
VIERECK-NEW YORK

September 11th, 1939.

Received
Department of State
1939 Sep 12 AM 11:43
Division of
Communications and Records
(DIVISION OF CONTROLS
SEP 12 1939
ack 9-16-39
L H P/M J Y
DEPARTMENT OF STATE)

Hon. Cordell Hull,
Secretary of State,
Washington, D. C.

Dear Sir:

Under the new law I wish to announce to you that I have made a contract with the Munchner Neuesten Nachrichten, Munich, to act as their correspondent in the United States. This contract was made after long negotiations on July 20th, 1939, at Munich. I take the liberty of enclosing a copy of the contract herewith.

As you will notice the contract contains a clause for its cancellation, if it should be impossible to transmit exchange from Germany. It would, of course be cancelled automatically, as far as I am concerned, in the unhappy case of a

rupture of relations between the United States and Germany.

Sincerely yours,

GEORGE SYLVESTER VIERECK.

Filed Sept. 20, 1939
Trans Atlantic
Bureau
Sep. 13, 1939

GSV:EG.
Encl.

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77 **Defendant's Exhibit 53.**

September 20 1939

In reply refer to
Co 800.01B11 Registration/521

My dear Mr. Viereck:

The receipt is acknowledged of your letter of September 11, 1939, informing the Department of the provisions of a contract recently concluded between you and Münchner Neuesten Nachrichten, Munich, under which you undertake to become the correspondent of this newspaper in the United States.

In this connection, it is recalled that in the course of a visit to the Department on March 13, 1939, you indicated that you intended to continue writing for publication in this country whether or not you undertook to write for a foreign newspaper. Should this be the case, it would appear that, by reason of the agency relationship described in your letter under acknowledgment, you are subject to the requirement of registration under the provisions of section 2 of the Act of June 8, 1938, as amended, requiring the registration of agents of foreign principals. These provisions of law and regulations

promulgated
Mr. George Sylvester Viereck,
305 Riverside Drive,
New York, New York.

78 promulgated thereunder are set forth under Part I of the enclosed pamphlet, *Agents of Foreign Principals and of Foreign Governments.*

I am enclosing blank forms for your use in executing a Registration Statement and submitting it to me for filing in accordance with the provisions of law referred to above.

Sincerely yours,

For the Secretary of State:
CHARLES W. YOST,
Assistant Chief, Division of Controls.

Cr
Sep 18 1939
Sep 19 1939
Sep 20 1939

Enclosure:
Pamphlet.
Two Registration Statement forms.

A true copy of the signed original

Co: LHP:
MJY
9-16-39

---

79 **Defendant's Exhibit 58.**

September 30 1939

In reply refer to
Co 800.01B11 Registration—
Viereck, George Sylvester/8

My dear Mr. Viereck:

The receipt is acknowledged of your letter of September 23, 1939, submitting with reference to the Department's

letter of September 20, your Registration Statement for filing pursuant to the terms of the Act of June 8, 1938, as amended.

Your Registration Statement has been accepted and filed under the number 367 and date September 26, 1939. With reference, however, to the copy of the contract in German submitted with your Registration Statement, I invite your attention to the fact that under the regulations, Registration Statements and their accompaniments must be submitted in English and if in a foreign language, be accompanied by an English translation thereof. I should appreciate it, therefore, if at your earliest convenience,

Mr. George Sylvester Viereck,
305 Riverside Drive,
New York, New York.

convenience, you would furnish me an English translation of the document in question in order that it may be filed with your Registration Statement in accordance with the regulations.

In reply to the inquiry contained in the final paragraph of your letter, I suggest that if and when the proposed agreement is consummated, you furnish the Department a copy thereof for its consideration in determining whether or not it should be filed with your Registration Statement pursuant to the provisions of the Act of June 8, 1938, as amended.

Sincerely yours,

For the Secretary of State:
CHARLES W. YOST,
Assistant Chief, Division of Controls

CR. Sep 29 1939 PM
Sep 30 1939 #2
J. A. G.
Co: LHP:MJY
9-26-39—9-28-39

CI
MSC

A true copy of the
Signed original
G. M. S—A-M

81 **Defendant's Exhibit 61.**

October 9 1939

In reply refer to
Co 800.01B11 Registration—
Viereck, George Sylvester/10

My dear Mr. Viereck:

I acknowledge the receipt of your letter of October 2, 1939, and have to inform you that the English translation of your contract with the Chief Editorial Department of the Münchner Neueste Nachrichten, Munich, has been filed with your Registration Statement submitted pursuant to the Act of June 8, 1938, as amended, requiring the registration of agents of foreign principals.

I note that if and when the proposed contract described in your letter of September 23 is consummated, you will furnish the Department a copy thereof in accordance with its suggestion.

Sincerely yours,

For the Secretary of State:
CHARLES W. YOST,
Assistant Chief, Division of Controls

Mr. George Sylvester Viereck,
305 Riverside Drive,
New York, New York.

CR Oct 6 1939 PM
Oct 9 1939 PM
Co: LHP:MJY
10-3-39

GHP
CI
A-M

A true Copy
of the signed
original

82 **Defendant's Exhibit 63.**

GEORGE SYLVESTER VIERECK
305 Riverside Drive
New York

RECEIVED
DEPARTMENT OF STATE

TELEPHONE
ACADEMY 2-7030

CABLE ADDRESS
VIERECK-NEW YORK

October 12 1939
1939 OCT 12 PM 3 54

October 7th, 1939.

DIVISION OF
COMMUNICATIONS
AND RECORDS
(DIVISION OF CONTROLS
OCT 10 1939
Ack. 10-10-39
L H P/M J Y
DEPARTMENT OF STATE)

Mr. Charles W. Yost,
Division of Controls,
Department of State,
WASHINGTON, D. C.

Ref. Co 800.01B11-Registration
VIERECK, George Sylvester.

Dear Mr. Yost:

In accordance with your kind suggestion, I herewith enclose a copy of my agreement with the German Library of Information. I did not receive the letter with the approval until today. I do not act as a Public Relations Counsel, as a press agent, or as a "servant". I do not edit the publication. I do not determine its policy. My job is merely that of a rewrite man on a newspaper. I revise material given to me and lick it into shape from the point of style and journalism.

Under those circumstances it seems to me that in accordance with your own decisions, there is no necessity for

registering this contract and making it a matter of public record.

This letter is for your information and not for the files of the State Department. However, I shall of course be guided by your advice in the matter.

Thanking you for your various courtesies, I am

Sincerely yours,

GEORGE SYLVESTER VIERECK

GSV:FG.
Encl.

---

83 **Defendant's Exhibit 64.**

October 12 1939

In reply refer to
Co 800.01B11 Registration—
Viereck, George Sylvester/12

My dear Mr. Viereck:

I acknowledge the receipt of your letter of October 7, 1939, submitting for consideration, in accordance with the Department's suggestion, a copy of a contract recently entered into between you and the German Library of Information. I have carefully considered the contents of your letter and of the enclosure thereto, and am of the opinion that the contract describes activities of a character definitely within the purview of the Act of June 8, 1938, as amended. A copy thereof has accordingly been filed with your Registration Statement submitted pursuant to the legislation referred to above. In accordance with your request, however, your letter is being withheld from the public files of the Department.

I

Mr. George Sylvester Viereck,
305 Riverside Drive,
New York, New York.

84 I may add that the above informal opinion is expressed merely as a courtesy to you. The Department does not rule officially on such matters.

Sincerely yours,

For the Secretary of State:
CHARLES W. YOST,
Assistant Chief, Division of Controls

CR
Oct 12 1939
J. C. G.
Co:LHP:MJY
10-10-39

Eu A-M
f.wy.

A true copy of the signed original

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85 **Defendant's Exhibit 65.**

GEORGE SYLVESTER VIERECK
305 Riverside Drive
New York

TELEPHONE
ACADEMY 2-7030

CABLE ADDRESS
VIERECK-NEW YORK

October 13th, 1939.

/16

(DIVISION OF CONTROLS
OCT 18 1939
Ack. 10-18-39
J E P/M J Y
DEPARTMENT OF STATE)
OCT 20 1939
DIVISION OF
COMMUNICATIONS AND RECORDS

Mr. Charles W. Yost,
Division of Controls,
Department of State,
Washington, D. C.

Ref. Co 800.01B11 Registration
VIERECK, George Sylvester.

Dear Mr. Yost:

Thanks for your kind note of Oct. 12th. Is there anything else I must do in the matter? Must I report automatically

every six months on the contracts in question, or will I receive a reminder?

Sincerely yours,

G. S. VIERECK

GSV:FG.

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86 **Defendant's Exhibit 66.**

October 20 1939

In reply refer to
Co 800.01B11 Registration—
Viereck, George Sylvester/17

My dear Mr. Viereck:

The receipt is acknowledged of your letter of October 13, 1939, with reference to your obligations under the Act of June 8, 1938, as amended, requiring the registration of agents of foreign principals.

In reply to your inquiry, I have to inform you that you are correct in your understanding that Supplemental Registration Statements are required to be filed every six months by registrants under the provisions of law referred to above. Moreover, blank forms will be sent to you prior to each date upon which another statement should be submitted.

Sincerely yours,

For the Secretary of State:
EDGAR P. ALLEN,
Acting Assistant Chief, Division of Controls

CR
Oct 19
1939

Mr. George Sylvester Viereck,
305 Riverside Drive,
New York, New York.

Co:JEP:MJY
10-18-39

(A true copy of the signed original)

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87 **Defendant's Exhibit 81.**

May 3, 1941

In reply refer to
Co 800.01B11 Registration— 39
Viereck, George Sylvester

Cohalan & Morosini,
170 Broadway,
New York, New York.

Sirs:

The receipt is acknowledged of your letter of April 24, 1941 with which was enclosed a Supplemental Registration Statement executed by George Sylvester Viereck, submitted pursuant to the terms of section 3 of the Act of June 8, 1938, as amended, requiring the registration of agents of foreign principals. This Supplemental Registration Statement has been filed with Mr. Viereck's initial, Registration Statement, bearing the number 367 and date September 26, 1939.

Your statement that this Supplemental Registration Statement is intended to cover all of Mr. Viereck's activities on behalf of all foreign principals has been noted. This will confirm your understanding that it will not be necessary for Mr. Viereck to file a separate

Supplemental

88 Supplemental Registration Statement in connection with his activities on behalf of Dr. Giselher Wirsing and Verlag Knorr & Hirth in view of the fact that

this foreign principal has been included in his Registration Statement by virtue of the submission of a Supplemental Registration Statement filed March 17, 1941.

In order that the information set forth in your letter in regard to certain monies received by Mr. Viereck from the German Library of Information may be made of public record, a copy of your letter has been filed with and as a part of Mr. Viereck's Registration Statement.

Very truly yours,

For the Secretary of State:
ELDRED D. KUPPINGER,
Acting Assistant. Chief, Division of Controls

CR
May 2, 1941
Co :EDK: M J Y
4/29

Eu

FC
A true copy of the signed original

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89 **Defendant's Exhibit 83.**

July 16, 1941

In reply refer to
Co

My dear Mr. Viereck:

The receipt is acknowledged of your letter of July 9, 1941 in which you state with reference to your registration pursuant to the terms of the Act of June 8, 1938, as amended, requiring the registration of agents of foreign principals, that your agreement with the German Library of Information has been cancelled and your association therewith has

terminated. Enclosed with your letter were copies of agreements with the Library in regard to certain payments which have been made by it to you.

In accordance with what are understood to be your wishes, copies of the agreements referred to above have been placed on public record as a part of your Registration Statement.

Sincerely yours,

For the Secretary of State:
ELDRED D. KUPPINGER,
Acting Assistant Chief, Division of Controls

OC
Jul 16 1941

Mr. George Sylvester Viereck,
305 Riverside Drive,
New York, New York. Eu F C

A true copy of the signed original

Co:EDK:MJY
7/12/41

90 **Defendant's Exhibit 84.**

GEORGE SYLVESTER VIERECK
305 Riverside Drive
New York

TELEPHONE
ACADEMY 2-7030

CABLE ADDRESS
VIERECK-NEW YORK

September 19, 1941

September 8th, 1941.

(DIVISION OF CONTROLS
EDK
SEP 9 1941
Ack. 9-11-41
EDK/MJY
DEPARTMENT OF STATE)

Department of State,
Division of Controls,
Washington, D. C.

Re: CO 800.01B11
Reg. Statement—Viereck, George Sylvester

Dear Sirs:

This is to advise you that I have terminated my agency with the Munchner Neuste Nachrichten of Munich, Germany. Will you be good enough to make the proper notation on my registration statement.

In the last supplemental registration statement filed by me on April 24, 1941, which statement covered the period from September 25, 1940 to March 25, 1941, I informed the Department of State of the amounts received by me from the Munchner Neuste Nachrichten as their correspondent. Since that time, I have not received any additional compensation or emolument from the said newspaper.

I would appreciate an acknowledgement from you to the effect that this letter has been filed with my registration statement.

Very truly yours,

GEORGE SYLVESTER VIERECK.

91 **Defendant's Exhibit 85.**

September 19, 1941

In reply refer to
Co

My dear Mr. Viereck:

The receipt is acknowledged of your letter of September 8, 1941 in which you state, with reference to your registration pursuant to the terms of the Act of June 8, 1938, as amended, requiring the registration of agents of foreign principals, that you have terminated your agency with the Munchner Neuste Nachrichten of Munich, Germany. In accordance with your request, your letter has been filed with your Registration Statement.

Sincerely yours,

For the Secretary of State:
ELDRED D. KUPPINGER
Acting Assistant Chief, Division of Controls

Mr. George Sylvester Viereck,
305 Riverside Drive,
New York, New York.

Co:EDK:MJY
9/11
CR
Sep 12
1941
PM
Sep 17
1941 PM
Sep 18 1941 PM Eu FC

A true copy of the signed original

EXCERPTS FROM THE TRANSCRIPT OF PROCEEDINGS BEFORE THE TRIAL COURT.

I.

General Charge to the Jury and Appellant's Objections Thereto.

Note: The pagination refers to the pagination of the reporter's transcript of proceedings.

1570 The Court: Ladies and gentlemen of the jury, in the consideration of the indictment and of the several counts thereof, we are concerned with an Act of Congress commonly known as the "McCormick Act." It may be helpful for the jury for me to make brief reference to the legislative history of that Act, the Act which is here involved.

The House of Representatives in the 73rd Congress passed a House Resolution which has pertinence here:

"Resolved: That the Speaker of the House of Representatives be and is hereby authorized to appoint a special committee to be composed of seven members for the purpose of conducting an investigation of;

1. The extent, character and object of Nazi propaganda activities in the United States.

2. The diffusion within the United States of subversive propaganda that is instigated from foreign countries and attacks the principles of the form of Government as guaranteed by our Constitution. And,

3. All other questions in relation thereto that would aid Congress in any necessary remedial legislation."

The special committee appointed by the Speaker of the House of Representatives, by name known as the "McCormick Committee"—the committee taking the name of its chairman—after extensive hearings which are report-

1571 ed in many pages of testimony before the McCormick Committee, that committee after investigating over

nine months in its final report dated February 15, 1935, found that this country, "has been flooded with propaganda material and that such propaganda literature from various alien organizations outside of the United States which were engaged in un-American propaganda activity in an effort to gain adherence and to influence the political opinions of many of our people, and also to influence, if necessary and possible our Government policies."

It further found that all kinds of efforts and influences short of violence and force were used by foreign Governments and their various agencies to obtain their desired objective, which was to consolidate persons into one group subject to dictation from abroad, in distinct violation of every known American principle.

Furthermore, according to the McCormick Committee this foreign political propaganda was not directed merely at adults, but also at children who were taught to believe that the principles of Government taught by the foreign dictators were superior to the principles of our Government.

Moreover, the committee found that American firms and American citizens as individuals, sold their services for express propaganda purposes making their contacts with and accepting compensation from business firms.

The McCormick Act with which we are now con-
1572 cerned was the result of the public hearing and the recommendations of the McCormick Committee, and was designed to remedy some of the ills which that committee had reported to the House of Representatives.

The purpose of the legislation was to require unknown agencies who are in the United States for propaganda purposes to register with the Secretary of State. It was intended that the legislation should relate to political propaganda, to persons who were engaged by a foreign company,

foreign agents or connected with a foreign government engaged in political propaganda, and to those who are engaged in propaganda in this country connected with some particular country or political party of a country, or some firm, some group of business of the particular country who is using this as a means for that particular country or political party to hide its identity.

The committee maintained that the Congress and the people of the United States are entitled to have notice of any person who is in the United States or who employs any person for the purpose of disseminating political propaganda in the United States.

The committee sought through its Bill to determine through the instrumentality of registration with the Secretary of State, those activities of persons who are engaged by a foreign government directly or indirectly, to advise them on what methods or what is the best method to employ public propaganda; or who are engaged for the purpose of disseminating political propaganda in the United States.

1573

It was the purpose of Congress to bring out in the open information as to who is disseminating political propaganda in the United States, the purposes of such propaganda information which the Congress thought the American public is entitled to have.

The Bill as enacted into law was designed to accomplish the ends and aims of the McCormick Committee.

You are now told as a matter of law that through the passage of the McCormick Act the Congress sought to force propagandist agents representing foreign principals to come out in the open in their activity; to make known to the American public those who are so engaged in this country by foreign agencies, to spread doctrines alien to our Democratic form of Government; to make known to the American

public the sources of any such efforts; the sources that promote and pay for the spreading of such foreign propaganda, and to label the sources of such propaganda; to publicize the nature of a subversive or other similar activity of such foreign propaganda; to deter the spread of such pernicious propaganda by the spotlight of publicity resulting
1574 from the registration with the Secretary of State.

In seeking to attain these ends it was the intent of Congress, therefore, that the following persons should be required to register with the State department and to supply information about their political propaganda activities, their employers and the terms of their contract. All persons who are in the United States for political propaganda purposes; aliens coming to or in the United States for propaganda purposes of a political nature; American citizens who accept foreign political propaganda employment.

You are further told as a matter of law that the terms "Foreign Political Propaganda, propaganda purposes of a political nature and political propaganda, mean propaganda aimed toward establishing in the United States a foreign system of Government, group action of a nature foreign to our institutions of Government; propaganda for the purpose of influencing American public opinion on a political question.

Furthermore, propaganda and foreign propaganda are implicitly defined as spreading doctrines alien to our Democratic form of Government; spreading by word of mouth or by the written words the idealogy, the principles and the practices of other forms of Government and the things for which they stand, arbitrarily aiming to inculcate persons in the United States with those principles and
1575 teachings which seek to foster un-American activity; to influence the external and internal policies of this country and to violate the letter and the spirit of the Inter-

national Law, as well as the Democratic basis of our own American Institution of Government.

Accordingly, it is clearly apparent from the foregoing legislative history what types of activity the Congress intended should be made public information through the medium of registration.

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Objection was made to this part of the charge as follows:

1613 Mr. McGuire: Your Honor, I should like to have noted for the record that defendant notes an exception to that part of the Court's charge which concerns legislative history of the Act of June 8, 1938, and to the statement of such legislative history and report of the committee as an expression of the intent of the said Act of June 8, 1938, as to the purpose of the Act to require a full disclosure to the American people of the activities of the agents of foreign principals.

1614 Our objection to that part of your Honor's charge being based upon the fact that in a criminal case the intent of the Congress must be found within the four corners of the statute itself.

The Court: Well, that may go to all the matter which I stated on that point.

II.

Appellant's Offer of Prayer No. 19 Which Was Denied With Exceptions Thereto.

The appellant offered prayer No. 19 as follows:

"The jury is instructed that the law requiring the registration of agents for foreign principals committed its administration to the Secretary of State and both authorized

and directed that official to prescribe such rules, regulations and forms as were necessary to carry out the terms of the said Act for the registration of agents for foreign principals. The Secretary of State did prescribe regulations and a form for such registration of agents for foreign principals and a form for the supplemental registration of such agents for foreign principals. This supplemental registration form was required to be filled in with the information requested therein and filed with the Secretary of State within thirty days after the expiration of each six-months period following the date of the filing of the original registration form filled out with the information requested in the original registration form.

"Both the original registration form and the supplemental registration form had nineteen questions or statements for information, and these nineteen statements or requests for information were identical on the two forms; that is, on the original registration form and on the supplemental registration form. The supplemental form further provided at the top thereof on the first page that, with the exception of Question One, if the information or answer to be furnished under the supplemental form was identical with the information theretofore furnished on the original registration form, the registrant could use the word 'same' as to the particular statement or information required on the supplemental form.

"The defendant executed and seasonably filed both the original registration forms and the supplemental registration forms, and there is no charge in the three counts of the indictment concerning any failure of the defendant to properly furnish the information requested on the two original forms which he used for his first registrations under the law. The three counts of the indictment charge that the defendant failed to properly answer Question or Requirement

No. 11 even on each of the three supplemental forms. The indictment in its three counts makes no charges that the defendant failed to properly answer any of the other eighteen questions stated on the three registration forms.

"The jury is further instructed that this Question or Requirement No. 11 on the supplemental registration forms required the defendant to make a 'comprehensive statement of the nature of the business of the registrant.' If you find from all of the evidence that the defendant did not wilfully fail to make a comprehensive statement of the nature of his business for his foreign principals, you should find him not guilty. On the other hand, if you find beyond a reasonable doubt that the defendant wilfully failed to make such a comprehensive statement of the nature of his business for either of his foreign principals as charged in any one or all of Counts 2, 3 and 5 of the indictment, you should find him guilty."

1549 This prayer was denied and an exception granted. There was discussion of this prayer with the Court when it was offered, as follows:

1531 "The Court: Mr. Hickey, you have read the sug-
1532 gested prayer, defendant's prayer No. 19?

"Mr. Hickey: Yes, your Honor, and I have two objections to it.

"With respect to the next to the last paragraph commencing:

'The defendant executed and seasonably filed both the original registration forms and the supplemental registration forms:' It states that, 'there is no charge in the three counts of the indictment concerning any failure of the defendant to properly furnish the information requested on the two original forms which he used for his first registrations under the law.'

"I see no reason for the inclusion of that phrase at all. It does not constitute a charge in the indictment. It should not be included. Otherwise, it gives the inference in connection with the preceding portions that the use of the word 'same' is proper and there is no charge concerning what was said in the original statement.

"I think the inference would be misleading if the charge were given as written here.

"My second objection to it is the concluding statement of the requested charge that, 'If you find beyond a reasonable doubt that the defendant willfully failed to make such a comprehensive statement of the nature of his business for either of his foreign principals.'

"Now, your Honor has already ruled that if he fail-
1533 ed to make a comprehensive statement of the nature of his business either on behalf of his principals or on his own behalf, that is sufficient; and to give this charge would be to contradict charge No. 6 which has already been granted by your Honor.

"The Court: Would you like to be heard on that?

"Mr. Cohalan: I would, if your Honor please. Counsel for the defendant believes, your Honor, it is tremendously important, so far as the defendant is concerned, that the jury be instructed by the Court as to what precisely the charge against this defendant is.

"It is charged in the indictment that the defendant undertook certain activities. It is charged in the indictment that he failed to disclose those activities, but it is further limited in the indictment to the answer which the defendant gave to the requirement in paragraph 11 of the Registration Statement.

"We believe, in fact, we insist that the answers or that the information given by the defense in answer to that question must be viewed in the light of the requirement asked of him

in that question, and in view of that, and in view of the fact that the question was prepared by the authority of the United States, which had the authorization to construct questions to elicit information, we think it is very impor-
1534 . tant that your Honor point out to the jury exactly what the information was that was sought on the questionnaire, and what was before the defendant for his answer when he took the questionnaire up.

"So far as the last paragraph is concerned the request is here important in so far as it goes to the question of intent on the part of the defendant, and we ask the Court in specific language, as Mr. Hickey has just read, that, 'if you find beyond a reasonable doubt that the defendant willfully failed to make such a comprehensive statement of the nature of his business—'

"That was the query addressed to the registrant—'for either of his foreign principals;'

"Now, in each of these registration statements your Honor will recall he was registered for a foreign principal. The entire registration statement, so far as it was brought to the attention of the defendant, was a registration statement for a foreign principal; the specific name 'foreign principal' in each of the statements.

"It seems very important from the standpoint of intent that the purpose of the registration and the end or the entity which was coupled with the registrant in the registration statement, should be also taken into consideration when each of the details asked by the department was examined by the defendant.

"We believe for that reason that the charge as
1535 formulated by the defense, the requested charge as formulated by the defense, should be granted by your Honor.

"The Court: It seems to the Court that this prayer raises no consideration other than such as had consideration yesterday, and the Court has taken a position upon those matters.

"The Court does think that by the offer of this prayer the defendant makes his contentions in that regard in
1535 better form for the record. I am quite willing that he should have a complete record upon his intentions.

"So, the prayer is considered and disallowed and you will have your exception."

III.

Allowance by the Court of the Government's Prayers Nos. 2A, 2 and 8 and Appellant's Exceptions Thereto.

(a)

Allowance of Government's Prayer 2A.

1476 "Then there was handed up a little later Government's prayer No. 2-A and 2-B. 2-A reads as follows (reading):

"'It is for the jury to determine in the light of all the circumstances under which this law was passed and particularly in view of the fact that its avowed purpose is to compel full disclosure of activities of foreign propagandists whether when defendant stated "author and journalist" in response to Query No. 11 he willfully intended to conceal from the Secretary of State and the American people his activities in connection with Flanders Hall, the so-called War Debt Committees, the mailing under congressional frank of large quantities of reprints of so-called non-interventionist material, and the writing of all or part of certain speeches for Members of Congress, and to that end willfully

omitted to include these activities in his response to Query No. 11.'

"What do you say as to that one?

"Mr. Cohalan: Your Honor, I have some objections to this charge. In the first place, Your Honor, there are no circumstances before this jury, or there is no information or testimony before this jury, as to the light of the circumstances under which this law was passed, and there is no information or information before this jury as to the 'avowed' purpose of the law. Nowhere is there any proof
1477 that the avowed purpose of the law is to compel full disclosure of activities of foreign propagandists.

"I further object to the recurrence of the word 'activities' in connection with these charges made against the defendant on the ground that any reference thereto in relation to this charge must, perforce, be some indication by the Court as a matter of law that the activities referred to when the charge was specifically directed to subsection 11 of the supplemental registration statement, in someway forms a connection between the word 'activities' and the word 'business,' that statement in that subsection.

"But I rely principally on my objection for the grounds stated, that there isn't any testimony, that there aren't any facts in the light of the circumstances under which this law was passed, there isn't any of that before the jury.

"The Court: That is a matter of law that the Court will have to indicate to the jury from the legislative history of the Act. It seems to the Court necessary that that should be done so that the jury will know what kind of law they are dealing with here.

"Mr. Cohalan: Then Your Honor has the thought of going beyond the four corners of the statute in instructing the jury as to the law?

"The Court: Yes, I expect to give them some information with respect to the congressional action and the purpose as expressed.

1478 "Mr. Cohalan: Has Your Honor the further thought of stating to the jury anything about the avowed purpose of the law, the avowed purpose, that isn't represented in any instruction?

"The Court: Well, I haven't thought of using the word 'avowed' but I do expect to indicate the purpose of the Act.

"Mr. Cohalan: That is within the province of the Court, naturally, but we aren't concerned with that as yet. Isn't it true that now the only thought before us is whether or not an instruction having to do with the avowed purpose of the Act, when there isn't anything before this jury having to do with the avowed purpose of the Act, is improper?

"The Court: I think the purpose is a very definite one, whether you call it avowed or something else; the purpose is indicated in the congressional resolution that authorized the committee which made the study, so the purpose is very well established, and I wouldn't say that the use of the word 'avowed' adds anything or takes anything away.

"Mr. Cohalan: What does Your Honor think about the coupling of the words 'avowed purpose' with the words 'to compel full disclosure of activities of foreign propagandists,' after all isn't this going outside of the four corners of the statute under which the defendant is indicted?

"Supposing, for example, if you will hear me out on this,—

1479 "The Court: No, the legislative history of this Act shows very clearly that it was the purpose of Congress to force these representatives to come out in the open so that the Government and the public might know

their activities, and whom they were acting for, and who is paying the money, and all those other things.

"Mr. Cohalan: That is right, I agree with Your Honor there, but no matter what the avowed purpose of the Congress was, isn't it true that that purpose was expressed in the statute? The expression of the purpose is the statute, and are we not then necessarily concerned with the four corners of the statute, which is the outward manifestation of the avowed purpose?

"For example, Congress might, in its discretion preliminary to the passage of the legislation, have had every intention of going very much further than they decided to go along this line. Congress, on the other hand, you might say, at the time it had its discussions about this thing, might not initially have had the purpose of going as far as the statute went. Either of these things is purely in the realm of uncertainty. But this thing we do know, that Congress did declare its legislative purpose, and we do know that it promulgated and passed the Act, and the Act then must be, so far as we are concerned, as it seems to me, the outward expression of that legislative purpose, and it seems to
1480 me that to go behind the Act would be, in a large way, to destroy the very legislation and the very law which we have on the statute books, because if I come before Your Honor on a charge of violating the law, and Your Honor said to me, 'Well, you said, Mr. Cohalan, that the law says thus and so, but I was a Member of the Congress at the time that this law was passed and we had a very firm and avowed intention of doing thus and so,' am I not justified in saying to Your Honor, 'Conceded that you gentlemen had such and such a purpose, but the expression of the purpose is the only thing that I can adhere to, I can't go behind the law to find out what was in the minds of you gentlemen when you were discussing the law, it is the law.'

"So I think if you apply that to this particular principle, the avowed purpose of Congress can only be resolved into what Congress did, and that so far as the defendant, or so far as any other individual is concerned, while it is of tremendous interest to know what the legislators had in mind—

"The Court: It is a very common thing for courts, even the Supreme Court and the Appeals Courts, to go into the legislative history.

"Mr. Cohalan: I agree it is often done, but will you agree with me that if it is done where there is an amplification, where there is some puzzle, where there is some question as to what is meant? But here, when you say if you en-
1481 gage with a foreign principal I want you to do ten things, one, two, three, four, five, six, seven, eight, nine, and ten, that is plain, every-day English, as plain as any man would want to understand, and then you afterward are charged with some violation of one of those things, it seems to me that you can go right back and say this is the requirement, this is what Congress asked me to do, and anything that goes behind that, it seems to me, was not—

"Mr. Maloney: May I interrupt you, Mr. Cohalan, at this time to say this, that perhaps this argument can be answered best by referring to the title of the Act? The Act itself is entitled, 'An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States.' That is the title of the Act.

"Mr. Cohalan: That is right.

"Mr. Maloney: It is right in the law itself.

"Mr. Cohalan: I agree with Mr. Maloney there.

"Mr. Maloney: There is the avowed purpose of the Act. Here is the avowed purpose of the Act. You wouldn't ask for partial registration, Mr. Cohalan. It is only reasonable to assume that the only registration asked for is a full and complete registration.

"Mr. Cohalan: I agree, but it is the statute which decides. I feel that, with all due respect to the Court, that the heart of this indictment, and the heart of the ac-
1482 cusation against this defendant, is in the four squares of the statute requiring registration and requiring what he must register for, and that any instruction to this jury which would go behind it, which would go back, to see what was in the hearts and minds of the gentlemen in Congress that formulated this Act, by inference certainly might bring in other considerations and other requirements which are not in the law, and therefore would necessarily burden the defendant with a responsibility which the law as written and as promulgated did not put upon his shoulders, and I feel that that is tremendously important from the standpoint of the consideration to be given.

"The Court: I understand your point but I have come to the contrary conclusion, not only here but in many cases, similar cases, that it is not only necessary but important that the jury know more or less the legislative intent; so the prayer will be granted and you may have an exception."

* * * * *

The objection to the granting of Government's prayer 2A was renewed the next day as follows:

1550 "The Court: The Government's prayer 2-A?

"Mr. Cohalan: The Government's prayer, yes, I am sorry. You will recall, Your Honor finally decided to grant that, although Your Honor did state that in one statement to the jury that you were planning on covering some of those matters that were referred to in this charge.

"We would like Your Honor to reconsider the granting of this prayer on the ground that while the prayer states a reference back to the time of the statute was being discussed by the legislature before its passage, that the intention of the Congress was specifically shown in the passage

of the legislation, and, further, in that it directs such legislation to the Secretary of State directing him to pass on rules and regulations having to do with the carrying out of the Act.

"Now, in line with that, if your Honor please, it was the Secretary of State who formulated the questionnaire which was presented to each prospective registrant or to each supplemental registrant. We feel that the statute which was the outward expression of the legislative body, plus the regulations formulated by the Secretary of State,

1551 which was the outward expression on the mind of the Secretary of State in his endeavor to obey the Congress and to put this Act into operation and regulation, we feel that those two documents, the statute, No. 1, and the regulations as promulgated by the Secretary of State, No. 2, are all and comprise the total of anything that would be before the view, the possible view of the registrant when approaching this statute.

"In line with that argument, we then look at this proposed prayer by the defendant that it is for the jury to determine in the light of all the circumstances under which the law was passed; we believe that is going back further than the jury should be allowed to go; that the jury, after all, should be restricted to the same articles, if I may call them that, that any registrant registering under the Act would find, and particularly in view of the fact that its avowed purpose was to compel full disclosure.

"We claim, your Honor, that so far as the avowed purpose of the statute or of the legislation, rather, is concerned, that avowed purpose could only be found in its outward expression, which was the Act, and in the outward expression of the Secretary of State who was directed to put the Act into effect.

"We feel, therefore, that this charge or this prayer by the Government, in so far as it goes behind; No. 1, the statute; No. 2, the regulations prepared and promulgat-
1552 ed by the Secretary of State, is improper so far as the defendant is concerned.

"Colonel McGuire reminds me that when I am talking of the regulations promulgated by the Secretary of State, I am referring to such regulations only in so far as such regulations can be deemed in compliance with the Statute which the Secretary of State is attempting to put into operation.

"We feel, Your Honor, that so far as the jury is concerned in looking at this question, that the jury should be restricted to an examination and a scrutiny into only the same documents, the statute and the regulations, so far as they are legal, as would confront any registrant who is registering and attempting to comply with the law, and in that regard, if your Honor will think that over in line with prayer No. 2-A, I think your Honor will see what I am driving at; that I think that the prayer is altogether too broad.

"The Court: I think I shall adhere to the ruling I gave yesterday. You may have an exception to that."

* * * * *

1598 The Court gave this prayer No. 2-A as above quoted, and at the conclusion of the instruction, appellant again stated objections to the granting of
1615 such prayer, which exception the Court granted.

(b)

Allowance of Government's Prayer 2.

1597 The Court: "Government's revised prayer No. 2: 'The defendant is charged with having wilfully failed in his supplemental registration statements filed with the Secretary of State on April 23, 1940, October 25,

1940, and April 25, 1941, to set forth certain material information which he was required by law to disclose.

'One of the requirements established by the Secretary of State and set forth as Query No. 11 is that each registrant give a comprehensive statement of the nature of his business.

'In answer to this requirement, defendant sets down the words "author and journalist," on each of the supplemental registration statements in question.

'The indictment charges that the words "author and journalist" do not constitute a comprehensive statement of the nature of the business of this defendant, and that by so answering Query No. 11 it is charged in the indictment the defendant willfully omitted to state material facts which the law required him to state.

'The indictment sets forth certain activities which defendant allegedly engaged in.'

"Those are the activities which I enumerated when presenting the substance of the indictment to you, and it will not be necessary for me here to repeat them.

1598 "'If you find (1) that the defendant did the things charged by the Government in the indictment as a part of his business and (2) that such business constituted material information required by law to be disclosed, and (3) that the defendant willfully failed to disclose this material information in the supplemental registration statements, then you may find the defendant guilty as charged in each count of the indictment.' "

• • • • •

Exception was taken to such charge as follows:

1615 "Mr. McGuire: Also, we except to that part of the general charge which states and leaves the impression upon the jury that the defendant must, in addition—this is the effect of the charge—must, in addition to

answering question 11 of the supplemental form, must state all of his activities, whether he is engaged in performing those activities as a private individual or as an agent for a foreign principal.

"The Court: Yes.

"Mr. Cohalan: And in closing, your Honor, may I just renew my exception to your granting of Government's prayers Nos. 2, 2-A and 8, if I may call them in that way.

"The Court: That is, No. 2 as rewritten?

"Mr. Cohalan: 2 and 2-A.

"Mr. Hickey: 2-A is revised.

"Mr. Cohalan: 2, 2-A and 8. And, to your refusal to charge defendant's prayers Nos. 2, 3, 14 and 19.

"The Court: Yes, you may have that."

(c)

Allowance of Government's Prayer No. 8.

1601 The Court: "Government's Prayer 8:

"'The jury is further advised as a matter of law by the Court that if you find that the defendant engaged in the activities set forth in the indictment, it is not necessary that you find that he engaged in such activities on behalf of his foreign principal or principals. It is sufficient if you find he engaged in the activities, whether on behalf of his foreign principal or principals or on his own behalf.'"

1615 Specific objection was made and allowed to the granting of this prayer. Objection was made to this prayer before the Court decided to so instruct the jury.

1463 Mr. Cohalan: "Now, in regard to that, your Honor, I argue to you again that the only thing confronting a registrant or a supplemental registrant in attempting to make out his statement is the form sub-
1464 mitted by the Secretary of State together with the law, and the law specifically says, under Section 3

thereof, which provides for the supplemental registration statements being filed, at stated intervals it provides that each filed statement at these regular intervals shall contain a statement containing such details required under this Act, as the Secretary shall fix, of the activities of such persons as agent of a foreign principal during said six months' period.

"Now in line with that requirement, your Honor, and in line with the fact that the law specifically states that these activities are necessary to be recorded under the Act, even if you grant, for the purposes of this argument, that the Secretary did fix in the statement a requirement calling for such activities, the very law itself states that those activities and the activities to be recorded are activities as agent of a foreign principal during said six month's period.

"Now, in line with that, and referring back to the proposed prayer, I claim, on behalf of the defendant, that if the Court charges to the jury that it makes no difference whether the so-called activities were pursued on behalf of the foreign principal or not, that all the jury has to find is that such activities were pursued, that the Court is virtually reading out of the law an expressed limitation put in there by the lawmaker, and it seems to me that it
1465 is therefore virtually putting the defendant on trial for something which he is not properly charged with.

"He can't be charged under the law with a violation which the law expressly limits to activities of such persons as agent of a foreign principal and then come in and be confronted with the thought that whether activities as agents on behalf of a foreign principal or not, that they are probably subject to this ruling, it seems to me that it is going completely outside the statute and is therefore prejudicial to the defendant's liberty.

"I would like your Honor, if you would, to give that consideration in reference to this particular charge, because it is expressly germane, and I believe makes a charge such as this an altogether improper charge so far as the defendant is concerned. I would like to have you consider that problem.

"The Court: Well, I take it the effect and the purpose of this prayer is to give the law regulating the trial and it is desired only to indicate that these activities may or may not be material facts, and that being so, whether they were done on behalf of a foreign principal or under the limited act.

"After all, in addition to this you have the question of materiality.

1466 "Mr. Cohalan: Concededly I agree with that, but I say this, that this jury is going to listen with greater attention, and the sum and substance of this charge as it is presently constituted, and as it would read to the jury, is to say to the jury as a matter of law, from the bench, and they are guided accordingly, that whether or not the defendant did these acts, pursued these activities on behalf of a foreign principal or not, is not a question within your province here, whether he did them for a foreign principal or not is of no consequence, just as long as you find he did do it.

"Now, when you take that and go back into the law itself, the law expressly limits, if your Honor please, and there is no ambiguity apparent, the law specifically limits such activities by qualifying them with the words 'Of such persons as the agent of a foreign principal during that six months' period.'

"Now, your Honor, whatever meaning may be attached to 'regulating' I think that your Honor will agree with me that no regulation which deliberately seeks to go beyond

the expressed words of the statute, and not only go beyond, because I don't think that is a proper statement of it, but to go in a diametrically opposite direction than the words of the statute, should be considered as having an importance equal with the statute, much less parallel. It is the words of the statute, I should think, that govern, no matter what the relations were concerning it, if
1467 those relations, I should say, go directly opposite.

"So that I think that in line with that limitation, expressly set forth in the statute, and that is the part of the statute which has to do expressly with the charges in the indictment, I think in line with that, I think an instruction to the jury telling them that they might just as well strike out of the law those words 'As agent for a foreign principal' is a very prejudicial instruction so far as this defendant is concerned, because after all, when all is said and done, the jury herein, their consideration of the indictment proper, have to consider intent as well as everything else, as your Honor will instruct them; and if your Honor is going to virtually state that those words aren't in the statute, then your Honor, I take it, is also going to virtually tell the jury that an entirely different situation exists than has existed.

"I think it is of grave importance. I don't know whether I am bringing my thought out as clearly as I might.

"The Court: I think I understand your point, and if this stood alone it might have that deciding effect, but I am rather inclined to think that it is a proper statement of the law and will be properly understood, when it is considered in connection with the other matters in the charge.

1468 "Mr. Cohalan: Excepting my thought on the question that these prayers are separate, one from

the other. Would your Honor consider an amplification of that charge limiting the particular thoughts to the question of the activities as opposed to the materiality and as opposed to the question of whether or not they were properly a part of sub-section 11? My thought simply is that the jury is going to listen to a number of instructions.

"Naturally I agree with your Honor that if the jury listening to these instructions can take the composite picture that perhaps they would get the exact meaning that your Honor is seeking to convey to them by that instruction coupled with the other instructions. But I don't think that the jury, so far as the defendant is concerned, I don't think that that responsibility should fairly be left with them.

"I think that the Court here, in his province of instructing the jury, on the law, should endeavor, as I know he will, to bring the full situation before their minds, and I would like, if your Honor is going to proceed on the proposition worded in this requested prayer, that you ask the Government if they would amplify that particular charge so that it would include the various other thoughts, on materiality, on whether or not these so-called activities properly came under question 11, so that the jury when they read the entire thing would understand the law
1469 your Honor and myself have been discussing here.

"The Court: Well, for the present I will indicate that this prayer will be granted, but I will say this, that I will give it further thought, and I will endeavor, of course, to see that it has its proper place and proper meaning in the general charges.

"Mr. Cohalan: Will your Honor preserve to me an exception?

"The Court: Yes."

IV.

The Exclusion by the Trial Court of Appellant's Chief Trial Counsel, Mr. Morosini, From Further Participation in the Case.

The witness **Leonard H. Price** was duly sworn and testified on direct examination that he was a lawyer and had been employed in the Department of State and that as such employee he had prepared the first draft of the registration statements which were used for the initial and supplemental registrations of agents for foreign principals. Then the following took place:

1382 "Q. And you selected the language used in the questions? A. Yes.

"Q. Now, from what did you prepare these forms?

"Mr. Maloney: Now, just a minute—

"The Witness: They were prepared—

"Mr. Maloney: Just a minute, Mr. Price. I must object at this time to this testimony as being incompetent, irrelevant and immaterial as well to the issues here.

"Mr. Morosini: I think it is quite material, if the Court please.

"The Court: He may answer in general terms. Do

1383 not specify, but make your answer general.

"The Witness: They were prepared with a view to drawing out—

"By Mr. Morosini:

"Q. I am asking you from what were they prepared? A. From the Act, principally.

"Q. From the Statute itself? A. Yes.

"Q. In other words, I understand that when you prepared these forms you had the Statute in front of you? A. That is correct.

1383 "Q. Now, I point to question 11 on the original registration form, it reads, 'Comprehensive statement of nature of business of registrant.' Is that correct? A. That is correct.

"Q. I show you a pamphlet copy of the Statute, can you tell us from what portion of the Statute that question was taken?

"Mr. Maloney: I object to that, sir, as incompetent, irrelevant and immaterial.

"The Court: Objection sustained.

"Mr. Morosini: Well, now, if the Court please, I think this inquiry is vitally important. The indictment here charges this defendant with the violation of this particular requirement. I think we are entitled to inquire from
1384 the man who prepared it just what it means.

"The Court: If there is a question incident to the issue, it is a question of law for the Court.

"Mr. Morosini: I submit to your Honor the question of intent is present in this case, and I think, after all, before anyone can determine whether or not anybody has properly answered a question, that we are entitled to testimony as to what that question means, and I think perhaps the best testimony on that is the man who prepared it himself.

"The Court: The Court thinks not. The objection is good.

"Mr. Morosini: Well, now, if the Court please, I intend, through this witness, to inquire fully into the preparation of these forms and the questions contained on the forms. Do I understand that by your Honor's ruling that I am not going to be permitted to inquire into that line?

"The Court: You can only understand that I have sustained the objection which has now been made.

"Mr. Morosini: May I have an exception?

"The Court: Yes.

By Mr. Morosini:

"Q. Is there anything in Section 2 of the Statute which requires a registrant to state the comprehensive nature of his business?

1385 "Mr. Maloney: I object to that question, sir, as improper.

"The Court: Objection sustained.

"Mr. Morosini: May I have an exception?

"The Court: Yes.

"Mr. Morosini: One more question.

By Mr. Morosini:

"Q. Can you tell us, Mr. Price; I direct your attention to question 11 of the Supplemental Registration Form, 'Comprehensive Statement of Nature of Business of Registrant.' Can you tell us from what source that language was obtained, I mean with reference to the statute?

"Mr. Maloney: Now, I object to that, sir, as being improper.

"The Court: Objection sustained.

"Mr. Morosini: Now, if the Court please, I insist here that we are entitled to show through this witness, the man who prepared these forms, what these forms mean. I might say the Government has been given wide latitude of proof here and we come in here with a defense and we do not have an opportunity of putting in any testimony.

"The Court: The Court thinks you are asking the witness for a statement of law which must be the obligation of the Court.

"Mr. Morosini: I am not asking this witness for

1386 a statement of law, if the Court please. He prepared these forms. He said he prepared these forms from the statute. I think it is a fair and reasonable question to ask him what portion of this statute this question was taken from.

"After all, he prepared them, we did not prepare them. If he does not know, who does know?

"The Court: The objection has been sustained.

"Mr. Morosini: Now, if the Court please, I think your Honor has foreclosed us from a very important line of inquiry into this case. I think in view of your Honor's rulings throughout the Government's testimony and throughout the defendant's testimony, I charge that your
1386 Honor is biased in favor of the Government and prejudiced against this defendant.

"I say that this defendant has no alternative but to rest his case.

"Mr. Maloney: Do I understand—

"The Court: Any further questions?

"Mr. Maloney: No, we have no further questions at this time.

"The Court: You may be excused, Mr. Witness.

(Witness excused.)

"Mr. Maloney: I understand the defendant rests.

"The Court: Has the defendant rested his case?

"Mr. Morosini: Yes, if the Court please.

1387 "The Court: Is there any rebuttal?

"Mr. Maloney: No, sir.

"The Court: Very well, the Jury will keep in mind the admonition and be back at 1:30.

(Whereupon at 12:30 o'clock P. M. a recess was taken to 1:30 O'clock P. M.)

1388 AFTERNOON SESSION

(The proceedings were resumed, pursuant to the noon recess, at 1:30 o'clock P. M.)

The Court: Counsel will come to the bench, please.

(Side-bar conference at the bench, the jury not yet in the courtroom, as follows:)

"The Court: Mr. Morosini is here in this court as a matter of privilege and this Court expects courtesy under these circumstances.

"The Court thinks that the remarks made by Mr. Morosini were entirely out of line when he rested the defendant's case. Accordingly the privilege extended to him is withdrawn and he will not participate further in the trial of this case.

"Fortunately Mr. Cohalan is here, and he has able counsel with him, Colonel McGuire. They will proceed with the trial of the case to its conclusion.

1388 "Mr. Cohalan: May I state this in answer to your Honor's statement—

"The Court: Yes.

"Mr. Cohalan: As co-counsel in this case we have to a certain extent divided up the work, do you see. Amongst the other things that Mr. Morosini has prepared and is prepared to deliver to the Court are motions for a dismissal, the renewal of the motion to dismiss, and a

1389 motion for a directed verdict at the conclusion of the case.

"I am not in a position to adequately represent at this time the defendant's cause in that respect. I am asking, therefore, that the Court, in its capacity as the judicial officer of this trial, take this matter into consideration. It is the defendant, Your Honor, who is on trial here.

"The Court: Yes. I would have to look at that a little different if Mr. Morosini was the only attorney, but you are here, Mr. Cohalan, you are an able lawyer, and Colonel McGuire is here. There is no better gentleman and no better student of law than he.

"Now, it may be that I should extend you sufficient time to organize the work that you expected Mr. Morosini to do. If it suits your convenience, I will permit you to take until tomorrow morning.

"Mr. Cohalan: May I have a moment, may I interrupt for a moment just to discuss this a minute?

"The Court: Yes.

"Mr. Cohalan: Thank you.

(After which proceedings were resumed as follows:)

"Mr. Cohalan: Gentlemen, will you come up, please.

"May I state to the Court that as one of the at-
1390 torneys for the defendant, George Sylvester Viereck,
I take exception to the ruling of the Court in this respect on the ground that after all is said and done it is
the defendant whose rights are here in jeopardy, and
1390 as one of his attorneys I can state steadfastly to this
Court that I have not prepared, nor do I think in justice to my client that I can in a short time prepare an adequate presentation of the motions addressed to the law of this case, and that therefore the ruling by his Honor to my mind is imperiling to the rights of the defendant here.

"The Court: In answer to that, I may say this, that it is my opinion that the remarks made by Mr. Morosini in submitting his case and resting were delivered for the purpose of encouraging this jury to believe that there is no use in proceeding further with the defense because the Court wouldn't permit a defense to be put in, and if the Court is correct in that, then the effort on the part of Mr. Morosini was to obstruct justice.

"Mr. Morosini: May I answer that, if the Court please?

"The Court: No, indeed. Not at this time. I will hear you later.

"Mr. Cohalan: May I state in reply to that that as one of the attorneys for this defendant who is engaged in the
active trial of this case that I can firmly state to your
1391 Honor that I do not believe that Mr. Morosini was
actuated by any such improper motives as your Honor suggests and I would like as one of the attorneys

for the defendant to have an exception noted to that remark.

"The Court: You may.

"Mr. Cohalan: Thank you.

"The Court: This is not stated to the jury. This is stated to counsel.

"Now, if you wish you can have until tomorrow morning to prepare your motions.

"Mr. Cohalan: And also the summation that follows

1392 "The Court: And at that time have ready for submission any prayers that are desired by either side, after the Court has heard and disposed of whatever motions are to be considered, so that if the motions are overruled, as they may be, we can proceed then to the consideration of the prayers you have in mind.

1392 "Mr. Cohalan: May I just state this finally, that if the Court has taken the position that Mr. Morosini's utterance we will say, were improper, that the Court, as all our Courts, has the right to take up with Mr. Morosini the question of Mr. Morosini's conduct, but that the big issue, so far as we are concerned, in this case, is with the safeguarding of the rights and the priveleges of this defendant, and I think, as one of the attorneys for the defendant, that the Court, in taking this action, is not punishing Mr. Morosini, if punishment is the proper result of such conduct, but it is punishment to the defendant.

"The Court: The Court thinks not, because the Court thinks that you, Mr. Cohalan, have the ability, you have a thorough knowledge of the case, as thorough, I am sure, as Mr. Morosini has, and you have the advice and counsel and help of one of the ablest men of our local bar.

"Mr. Cohalan: Well, may I just say that we accede to your Honor's ruling, but we would like an exception thereto?

"The Court: You may have an exception."

V.

Admission in Evidence of the Book Written by Appellant and Published in 1930 Under the Title "Spreading Germs of Hate" and it's Use by the Prosecution Before the Jury.

In his opening statement to the jury, Prosecutor Maloney stated:

188 "Mr. Maloney: Ladies and gentlemen, in the course of this trial I will give you a definition of 'propaganda'—I will give you the definition of what it is, that the defendant himself makes, what he considers propaganda to be, and submit to you, ladies and gentlemen, it is a pretty good definition of 'propaganda'.

"I hold here in my hand a book. This book will be the text of the Government and the obituary of this defendant.

"Its title is 'Spreading Germs of Hate,' by George Sylvester Viereck.

"Mr. Morosini: May I interrupt again? As I have said before, I do not like to keep on interrupting, but I believe that I would like to have Mr. Maloney's statements confined to an opening statement and not used for the purpose of putting testimony in the record at this time.

"Mr. Maloney: I fully intend to offer this book in evidence in the course of the trial, sir. I think it is proper.

"The Court: The Court thinks, however, that the jury are not to be informed as to the contents of the book until the Court has permitted it to go in evidence."

* * * * *

When Government Witness **Hauck** was under direct examination, the following occurred:

283 "By Mr. Maloney:

"Q. Tell us about some of the stuff that is not poetry that he has written. A. 'Spreading Germs of Hate.'

"Q. Did he tell you he had written a book by that

284 title? A. Yes, sir.

"Q. Did you ever see it in his library at 305 Riverside Drive, New York City? A. Yes, I have seen it.

"Q. I show you this book entitled 'Spreading Germs of Hate' by George Sylvester Viereck (handing book to the witness). Is that the book he said he wrote? A. Yes.

"Mr. Morosini: It is not a question of the fact that the defendant wrote this book 'Spreading Germs of Hate,' we merely object to it at this time or object to any reference to it at this time on the ground that it is not properly a part of the Government's case or has any reference to it, as far as the Government's case is concerned, and does not come within the indictment.

"The Court: It may be received. Has it been offered?

"Mr. Maloney: It has been offered.

"The Court: It may be marked in evidence.

"(Government's Exhibit No. 12 is marked in evidence.)

"Mr. Maloney: Now, with the Court's permission, may I just read one little paragraph from this book, page 11—

"Mr. Morosini: (Interrupting) Just one moment. Is that Exhibit 12?

285 "Mr. Maloney: That is right.

"Mr. Morosini: I might say at this time, if the Court please, if Mr. Maloney is going to read any portion from this book, I claim the right, of course, under the rule of completeness, to read other portions of this book.

"The Court: Yes, you may.

"Mr. Morosini: And I would like, if I so choose, to reserve that right until some later point in the trial.

"The Court: You will have that opportunity.

"Mr. Maloney: Page 11 of this book entitled 'Spreading Germs of Hate,' by George Sylvester Viereck, published in 1930. Part I of this book is entitled 'An overdose of poison.' Part II is entitled 'Secrets of German Propaganda.'

"Page 11, of the book, written by the defendant in 1930—and ladies and gentlemen, you will remember I said that we would have a definition of 'propaganda.' It says;—speaking of 'propaganda.'

"Mr. Morosini: Will you tell me what line you are going to read from, Mr. Maloney, so that I can follow you?

"Mr. Maloney: Speaking of propaganda at page 11, starting with the first paragraph on page 11—I beg your pardon—starting at the top of page 10:

"'It is difficult to draw a line between legitimate political agitation and propaganda. It is not always possible to determine where the one ends and the other begins. It is at times hard to distinguish between the press 286 agent, the lawyer, the public relations counsel, the reporter, the educator, the preacher and the politician, the statesman and the propagandist.'

"Then he says:

"'Again, what is propaganda?'

"And then coming down to the last paragraph on page 11, after some intermittent discussion, he says:

"'At last we have snared our bird. Propaganda is a campaign camouflaging its origin, its motive or both, conducted for the purpose of obtaining a specific objective by manipulating public opinion.'

"That is the definition of propaganda by the defendant.

"I might just read one other small passage. On page 55 of the same book the defendant Viereck writes, in 1930,

"'The objective of German propaganda was three-fold —to strengthen and replenish Germany, to weaken and embarrass Germany's foes, and third, to keep America out of the War by spreading truth as Germany saw it.'

"Then again at page 51—and this is the last quotation for the time—

"'Out of these negotiations grew the Propaganda Cabinet.'

"Mr. Morosini: Will you point out where you are reading from, Mr. Maloney?

"Mr. Maloney: The next to the last paragraph on
287 Page 51. I will read the whole paragraph.

"The German Steamship Companies were eager to place at Germany's disposal a large force of employees condemned to idleness by the Blockade. Meeting the editor of the Fatherland,'—who by the way was the defendant George Sylvester Viereck—

"Mr. Morosini: (Interrupting) Just one moment, if the Court please.

"Again, as I say, I have no objection to testimony coming from witnesses, but I do object to Mr. Maloney testifying.

"The Court: Objection sustained.

"Mr. Morosini: May I have that stricken from the record?

"The Court: It may go out.

"Mr. Maloney: There seems to be an objection to my stating that Mr. Viereck was the editor of the Fatherland, so I will go to page 61 of the same work, and I will quote from the last paragraph:

"'What do you propose, Mr. Viereck?' inquired Dr. Dernberg, looking at the editor of the Fatherland, who, ever-restless, was pacing up and down the room.'

"Mr. Morosini: Now, just a moment. May we have, if Government counsel is going to read from this Exhibit to which I have objected, and to its introduction in evidence to which I have an exception, may we have it read without dramatics and without characterizations, or
288 building any inferences or conclusions from the passage which he was reading?

"The Court: I thought he had just read it and said he was going back to the other page.

"Mr. Morosini: He seems to be combining both his own comment and what he is reading.

"The Court: I have no copy before me, but I thought he was reading, up to that point.

"You may proceed.

"Mr. Maloney: I don't intend to overdramatize this thing, but at the same time, may it please the Court, I cannot bring myself to descend to the level of forensics employed by my adversary, Mr. Morosini.

"Mr. Morosini: Now, just one moment. I object to these side remarks on the part of counsel. I object to this remark, and I object to other remarks made throughout the course of this trial.

"I believe when I was arguing a motion before your Honor, I was characterized as evesdropping on a conversation which he was holding with his colleague. There may have been other comments which I think, I am quite sure, are entirely unjustified and entirely unwarranted, in the course of the trial. I take exception to them, and I have asked your Honor to direct Government's counsel to conduct himself accordingly.

289 "The Court: Well, it is rather difficult for the Court to control the language of counsel. What I can do is to admonish this jury, and that I will do, that they are

to base their verdict upon the evidence of witnesses, guided to that verdict by the law as given to them by the Court.

"Mr. Morosini: My tactics, if the Court please, apparently on this trial have been put in issue. I do not want to pursue the matter further, but I would like to have it stated what tactics are so objectionable. I am attempting to conduct myself as a lawyer representing a defendant in the trial of this case. If there is anything objectionable about my tactics, I would like to have your Honor tell me so.

"The Court: Yes, if I see any, I will.

"Mr. Morosini: And I ask if you have seen any up to this point.

"The Court: Let us proceed.

"Mr. Maloney: Now, we will return to page 51, from which I was reading when we digressed for a moment.

"On page 51, next to the last paragraph—or the last paragraph:

" 'The German Steamship companies were eager to place at Germany's disposal a large force of employees condemned to idleness by the Blockade.

290 " 'Greeting the editor of the Fatherland'—the defendant Viereck—'the steamshipmen and other influential pro-Germans, at a New York Club on Central Park South, Germany's newly arrived ambassadors of propaganda, flanked by Embassy officials, adopted a program of cooperation. Out of the negotiations grew the Propaganda Cabinet at 1123 Broadway, where Dr. Dernberg and Dr. Fuehr occupied offices under the observant eyes of the United States Secret Service.' "

* * * * *

294 "Mr. Maloney: Now with the Court's permission, I would like to read from page 104 of this little work, entitled 'Spreading Germs of Hate.'

"Starting with the first paragraph:

" 'German Propaganda.'

"This is entitled 'Secrets of German Propaganda'—

"Mr. Morosini: (Interrupting) If the Court please, I renew my motion at this time to this evidence as part of the Government's case. After all this man stands indicted for acts allegedly occurring between September 26th, 1939 and April, 1941. This book was published back in 1930.

"I must further renew my objection to its presence in evidence, and any further reference to it, as far as the Government's case is concerned.

"The Court: Overruled.

"Mr. Morosini: May I have an exception?

"The Court: You may have an exception.

295 "Mr. Maloney: The chapter is entitled, 'Secrets of German Propaganda,' subdivision 11, entitled under McLemore: 'German Propaganda, in spite of the handicaps and misfortunes, in spite of the affairs at home and abroad, in spite of the indiscretions of Boy-ed and Papen, and the loss of the Albert Portfolio, kept American sentiment divided even after the Lusitania and played an important part in the Presidential campaign in 1916. There was at least one moment when German propaganda almost succeeded in barring American passengers from all ships armed for defense, or otherwise, under the flag of the Allies. The McLemore Resolution would have withdrawn the protection of the American Government from American citizens traveling upon an armed vessel under the flag of any belligerent. It was highly popular in the State of Texas—'

"Mr. Morosini: (Interrupting) Just a moment. Will you note that you are omitting a sentence?

"Mr. Maloney: I will read it: 'This idea coincided with the convictions of a large number of western states

men. It was highly popular in the State of Texas from which McLemore hailed. McLemore's intention was to protect American citizens against themselves and to remove a possible cause of friction with Germany. The resolution was suggested to McLemore—'

"Mr. Morosini: Will you please note, Mr. Maloney,
296 that you have also skipped a paragraph?

"Mr. Maloney: Yes, may it be noted that I have skipped a paragraph? 'The resolution was addressed to McLemore by Shamus O'Shiel, a brilliant young Irish-American poet and politician with extraordinary political sagacity and foresight. There was nothing improper in this. Congressmen constantly received suggestions for resolutions from friends and constituents. Occasionally one of their friends may be a propaganda wolf in sheep's clothing. The young Irishman who suggested the McLemore resolution, though acting on his own responsibility, was in close contact with both the German and the Irish propaganda chiefs. The moment the resolution had been introduced, he rushed to New York gleefully to report the event to the editor of the "Fatherland"—' the defendant Viereck, '—and to the editor of the Gaelic-American. He was welcomed by both with open arms.'"

* * * * *

307 "Mr. Maloney: Your Honor, there is just one part here that I would like to get.

"In connection with the part which has just been
308 read, just gone into evidence concerning the shipment of these books to Ireland, I would like to read from page 223 of the book, 'Spreading Germs of Hate.'

"Throughout the war the clan-na-Gael, a powerful secret Irish organization, kept step with the German-Americans. Professor Kuno Meyer, the great German author-

ity on the Gaelic language, harangued Irish meetings while Judge Daniel F. Cohalan—

"I take it that is Senior Judge Daniel F. Cohalan.

"'—inflamed German audiences with his eloquence. In most large undertakings the Teutons were led by their Hibernian allies.'

"I see it not approaches the hour for recess, sir."

• • • • •

311 "Mr. Morosini: There is a correction in the record I would like to take care of, rather a minor thing. When this book 'Spreading Germs of Hate' was placed in evidence, I made an objection to it and your Honor let it in. I distinctly recall asking for an exception and having your Honor grant me an exception. The record does not show it and I should like it to show it.

"The Court: Let the record now show that an exception is saved for the defendant. I intended to allow you an exception.

"Mr. Morosini: My recollection is that you did."

• • • • •

320 "Mr. Morosini: Now, if the Court please, I am going to object to any further reading from this book which is in evidence. It is obviously unrelated to the testimony. This witness has not testified to anything which I am quite certain Mr. Maloney proposes to read. Mr. Maloney, in this fashion, is making his argument to the jury, interspersing his argument to the jury during periods of this witness' testimony. I object to it.

"The Court: I think that is proper. You may read such portions as you wish, and you may supply others.

"Mr. Morosini. Then may we have all of the portions of that exhibit which the Government proposes to read, read at one time, so that the context and the continuity of
321 the book may be placed before the jury at one time?

"The Court: Well, I prefer to proceed the other war, let Mr. Maloney bring to the attention of the jury such parts as he thinks are important and relies upon, and later you may supply other parts, if you think they are necessary.

"Mr. Morosini: May I say, this is not examining this witness. This witness is on the stand for purposes of examination. May I say, let us complete the examination then if Mr. Maloney chooses to read, all right.

"The way it is being done, all we are getting here is factual testimony from the witness and then for purposes of argument the book is being periodically referred to.

"I object to the procedure, your Honor.

"The Court: I think it is proper.

"Mr. Morosini: May I have an exception?

"The Court: Yes, you may have one.

322 "Mr. Maloney: I will read from page 106 of the book, 'Spreading Germs of Hate,' the chapter entitled, 'Secrets of German Propaganda' near the end of the second paragraph on page 106:

" 'Each side attempted to hide its own selfish end behind some legitimate American purpose. It has been said that patriotism is the last resort of the scoundrel. It was the first resort of the propagandist. Every propagandist draped himself in the flag.'

"Mr. Morosini: May I just call the attention of the Court and the jury to the fact, and I would like to have it noted on the record again, that this book concerns itself with propaganda during the World War of 1917. I would like to have that fact again noted.

"The Court: The jury will have the book and they will determine for themselves what it is.

"Mr. Morosini: The book itself, your Honor, deals specifically with propaganda during that period; there is no

doubt about that. I would like to have that clear at this time.

"The Court: The jury will note that that is the fact. It is for them to interpret.

"Mr. Morosini: If the Court please, is it not a question of interpretation at all. It is a question of that book dealing with a certain subject. The book itself is specific
323 and concerns itself with propaganda during the war of 1917. The book was published in 1930, and it specifically deals with this particular thing.

"The Court: The jury will understand it."

Government witness **Spielman** was on the witness stand when Prosecutor Hickey inquired of her:

886 "Q. Have you ever read this book Government Exhibit 12 by George Sylvester Viereck and entitled 'Spreading Germs of Hate'? A. No, I perhaps should have.

"Q. Do you know whether the Senator read it? A. He had a great many of Viereck's books in his office; I don't know whether he read that one or not.

"Mr. Hickey: I would like to read just one short passage to the jury from page 118 of Government's Exhibit 12. The defendant Viereck states:

"'Nevertheless German propaganda—'

"Mr. Morosini: (Interrupting) Just a moment; I object to this at this time. This is not proper re-direct and it has nothing to do with the testimony of this witness and I object to it at this time.

"Mr. Hickey: May I explain that at this time?

"The Court: You mad read it.

"Mr. Hickey: I was going to say that he himself brought out that the Senator was against war.

887 "'Nevertheless, German propaganda in the United States cannot be pronounced a failure if its object was to keep America out of the war from August 1914, to April 1917.'

"By Mr. Hickey:

"Q. And you testified that is what Senator Lundeen was trying to do, is that correct?

"Mr. Morosini: What page is that from, Mr. Hickey?

"Mr. Hickey: Page 118, the last paragraph.

"I have no further questions."

* * * * *

Upon re-direct examination of **Congressman Fish**, Prosecutor Maloney in the presence of the jury, inquired of Mr. Fish:

683 "Q. Do you know, Mr. Fish, that in 1930, this good American citizen, Mr. Viereck, wrote a book called 'Spreading Germs of Hate' in which he said, and I quote from page 65: 'The objective of German propaganda was three-fold; to strengthen and replenish Germany, to weaken and embarrass Germany's foes, and to keep America out of the war.'

"Q. Do you know that he wrote such a book? A. No, I do not, I have never read the book.

684 "Q. Is it a coincidence that his views as a German propagandist coincide so closely with your views as a Congressman at this time? A. No, it is not. How do you mean it? I don't understand that question at all. What do you mean by it?

"Mr. Maloney: I have no further questions."

686 "Mr. Maloney: I would just like to know whether this witness would know Nazi propaganda if he saw it.

"The Witness: I would not, because I know no Nazi propagandists.

"The Court: I think that is sufficient."

• • • • • •

689 "By Mr. Maloney:

"Q. Speaking of patriotism, then, Mr. Fish, you do not agree with the defendant Viereck when he wrote as follows: 'It has been said that patriotism is the last resort of the scoundrel'?

"Mr. Cohalan: I object to this cross examination of the witness.

"Mr. Maloney: I am re-cross examining on the question of patriotism.

"The Witness: Anybody can ask me any question they want.

"Mr. Maloney: I just want to know if he agrees.

"The Court: It is objectionable, and the Court thinks it should be sustained."

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In his summation Mr. Maloney referred to "Spreading Germs of Hate" as follows:

1553 "Now, preliminary to that, you American ladies and gentlemen should know with whom we are dealing here. This man, George Sylvester Viereck, is, by his own admission, the world's outstanding propagandist. By his own admission, if you please. You have seen his book which, as I told you, would be the text of the Government's case, and the epitaph of this defendant."

Further along in this closing argument:

1557 "Now, in my opening address I made some reference to a definition of propaganda. So that you will not retire to your jury room with that definition befogged by all the fury of some acts of bickering, I would like to read it to you again."

"Page 11 of his book:

"'Propaganda is a campaign camouflaging its origin, its motive or both, conducted for the purpose of obtaining a specific objective by manipulating public opinion.'

"There is his definition, given by the world's greatest propagandist. Now, further on the world's greatest propagandist again said, speaking of laws to regulate propaganda, he said at page 90:

1558 "'There is no safeguard which the law can create which human ingenuity cannot circumvent.'

"And how well and diligently he has worked to try to prove it.

"But, ladies and gentlemen, for the first time in a long and dishonored career the master propagandist has failed. He is here today to answer to you because he has failed. He failed in his attempt to circumvent this law requiring his registration and full disclosure.

"Now, ladies and gentlemen, for anyone who has ever given it any thought, and I am quite sure that at some time or another most people have, there is an unusual element in the official German militaristic line, and it runs somewhat like this: 'You may be sure that any time that the German military machine devises a plan, that plan is pretty certain to be almost perfection itself.'

"Now to illustrate what I mean: in World War 1, the plan was to reach the channel ports by striking through the low countries. That was the plan in World War 1. It failed because of faulty execution. In World War 2 the identical plan, but this time it did not fail because the execution was perfect. They had benefited by what they had learned the first time. So it is with their propaganda.

"This little text sets forth what the German propa-
1559 ganda plan was in the last war and, now let us see just exactly how well they followed the same plan.

"At page 55:

"'The objective of German propaganda was three-fold: To strengthen and replenish Germany; to weaken and embarrass Germany's foes; and to keep America out of the War.'

"That was their objective in the last war. They did not succeed in the last war. Apparently their execution was faulty. This time they tried it again. Their execution was much better but stiul not successful, for which we can all give thanks. An amazing little bit, that shows to what infinite detail the plotters against our national security have followed the same plan.

"On page 57, and I quote from this Nazi disciple's book, they are speaking of the distribution of a certain propaganda letter, and I quote:

"'The distribution of this booklet, Dr. Fuehr insists must be nation-wide. "Let us send it," he says, "to all the men and women listed in Who's Who."' That was back in 1917. Here is a list of Who's Who compiled by the secretary to Congressman Fish at the request and direction of the defendant.

"Again, at page 104—er, before I go into that; this little booklet, 'Seven Periods of Irish History'—Mr. Cohalan—by Shaemus O'Shiel. Who was Shaemus O'Shiel? This book was published by Flanders Hall, but who was Shaemus O'Shiel? Page 104 of Mr. Viereck's book:

"'The resolution was suggested to McLemore by Shaemus O'Shiel, a brilliant young Irish American poet and politician, with extraordinary political sagacity and foresight. There was nothing improper in this.'

"So said Mr. Viereck in 1917.

"'Congressmen constantly receive suggestions for resolutions from friends and constituents. Occasionally one of

their friends may be a propaganda wolf in sheep's clothing.'

"How prophetic!

"'The young Irishman who drafted the McLemore resolution, though acting on his own responsibility, was in close contact with both German and Irish propaganda chiefs.'

"Shaemus O'Shiel; author of 'Seven Periods of Irish History' published by the Nazi publishing house, Flanders Hall.

"Not to bore you, but to call your attention to one or two other items, the matter of reprinting choice morsels and distributing them. That is nothing new. Page 82 of our text:

1561 "'Articles likely to prove effective weapons were reprinted as pamphlets. The smallest edition of several hundred thousand.'

"There it was in World War 1, and as it was in World War 1 so it was again in World War 2.

"And, one last example. These patriotic committees. These patriotic committees that changed their colors and their names at the will and the whim and the direction of this defendant. Here is what he said about the committee he had in 1917:

"'Subsequently the embargo conference—'

"That is what it was called then—'

"'which wrote this issue upon its banners, was organized in Chicago in 1915. In time it underwent many metamorphises and changes of name. It had various aliases and offsprings. The purpose behind them was the same. They were financed from the same secret source, and they were effective because a large majority of the members, including in some cases the man ostensibly at the head, were either sincere partisans of Germany or sincere pacifists.'

"There it was in the first war.

"Ladies and gentlemen, that is what we American people were exposed to in this war. Personally, it is my feel-
1562 ing, and I think it is shared by all of us, that we have caught this thing before it was the ruination of all of us."

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1568 "You heard him described variously as a good, patriotic American citizen; as a great author; as an author and journalist; as a man who wanted to do an honest job for America, and all the rest of it.

"Now I will give you a description of himself from his own book:

" 'A venom bloated toad of treason.'

"Ladies and gentlemen, he must have thought well of that description. He must have thought it was pretty accurate because he printed it in his own book at page 76. That is the description to which I do not care to add a single word."

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The book "Spreading Germs of Hate" was published in 1930, and appellant offered to prove by former Acting Secretary of State Phillips that:

1271 "Mr. Cohalan: We offer to prove through the testimony of Ambassador Phillips that back in the year 1933 Mr. Viereck, upon his return from Europe, contacted the White House and stated that in his travels abroad he had procured some knowledge or information which he thought would be of importance or value to the United States Government, and that he wished to be able to transmit or impart the same to the proper Government officials.

1272 "We further offer to prove that pursuant to such request on Mr. Viereck's part, he was referred by the White House to the State Department, and there met and conferred with Mr. Phillips, who was Acting Secretary

of State at that time; that he had a conversation with Mr. Phillips; that he was thereafter referred by Mr. Phillips for further conversations to some office aides in the State Department, and that these conversations continued.

"We offer this proof to show that in 1933, this man, who is here standing trial charged, amongst other things, with propaganda was, Number 1, accepted by the American Government, as a person capable of imparting to them information about matters and information of importance, and, Number 2, was so interested in the American Government that he was willing and anxious to impart such information.

"This proof goes to show past conduct on the part of this defendant, and is offered on the question of intent in this indictment.

"Let me add this thought, if I may. The prosecution in this case was permitted to introduce in evidence a book written by this defendant in 1930, having propaganda as its chief motive. We believe that the testimony offered here is competent in order to show that after the publication of
1273 that book, some three years after the publication of that book, this defendant, as shown by his acts and conduct, that his loyalty and allegiance lay to this Government, as opposed to any other Government.

"Mr. Morosini: The correspondence is, of course, offered on the same theory.

"Mr. Maloney: May it please the Court, we object on the same grounds as we objected to the correspondence, as of that date.

"The Court: I take it that it is proffered by this witness what was sought to be proved by the correspondence just rejected.

"Mr. Cohalan: It is in furtherance of that, yes.

"The Court: I will adhere to my ruling. It will be the same as to this proffer.

"There was an objection?

"Mr. Maloney: Yes, sir; there was an objection.

"Mr. Cohalan: May we have an exception?

"The Court: Yes, you may have one.

"Mr. Morosini: Do I understand the Court is not going to permit the defense to go into the activities of the defendant back in 1933, or thereabouts?

"The Court: I do not see how they are relevant, unless they have some connection with the matters inquired about.

"Mr. Morosini: I might say this. I do not think
1274 they are any more or less relevant than his book published in 1930.

"Mr. Maloney: That is offered on the theory of an admission in 1930, Mr. Morosini.

"Mr. Morosini: Of an admission in 1930?

"Mr. Maloney: That is right, prior similar acts.

"Mr. Morosini: A book written about his life, back in 1917?

"Mr. Maloney: Yes, these clearly have no relevancy.

"The Court: You may have an exception."

VI

Some Evidence Received on Behalf of the Prosecution Over Objections of Appellant Respecting Matters Not Contained in the Indictment.

The Government witness **Mrs. Weber** was permitted to testify over objections of the appellant, where the following took place:

538 "Q. What was the occasion of your visiting Mr. Viereck at his apartment on Riverside Drive? A. I visited him with my husband to pick up some manuscripts

and committee material for the 'Make Europe Pay War Debts Committee.'

"Mr. Morosini: Now, just a moment, if the Court please, I object to this answer as being improper. Let us have factual testimony.

539 "The Court: It may stand. Let us hear the next question.

"By Mr. Hickey:

"Q. Did you say you went there to pick up some material?

"The Court: Do not repeat.

"By Mr. Hickey:

"Q. What committee did you say the committee was? A. The 'Make Europe Pay War Debts Committee.'

"Mr. Morosini: Wait a minute, if the Court please, let us have the factual testimony, if she went there what did she do when she went there. I would like to have the question and answer stricken from the record.

"The Court: The answer may stand.

"By Mr. Hickey:

"Q. Now, Mrs. Weber, I want you to try to tell us exactly what occurred from the time you came to Mr. Viereck's apartment until you left, I want you to tell us what you observed, what was said or what anyone with you said in Mr. Viereck's presence, and what Mr. Viereck said. Will you do that, please? A. I will try.

"Q. All right. A. We went about the middle of October, 1940. I went up there with my husband to pick

540 up a box that was sent up there at Mr. Dennett's request—

"Mr. Morosini: Just a minute, if the Court please, I would like to have the witness' testimony confined to the actual story.

"The Court: Yes, just tell what was said and done.

"By Mr. Hickey:

"Q. Just tell us what happened when you got there. A. And we got to the apartment building, went up to the door, the maid opened the door and she told us to wait a few minutes and we could see Mr. Viereck; and this box had been sent at Mr. Dennett's—

"Mr. Morosini: Now just a moment, please.

"The Court: Just tell what happened.

"The Witness: I will try. It had been sent there at Mr. Dennett's request—

"Mr. Morosini: Just a moment, please. Can this witness be instructed to obey the instructions of this Court?

"The Court: That may go out. You will tell the conversation you had and what you observed there.

"By Mr. Hickey:

"Q. Do not repeat anything about the box until Mr. Viereck mentioned it. A. We went into the—we were finally ushered into Mr. Viereck's den and I remember particularly because the pictures on the wall, the
541 picture of Mr. Hitler, and we sat down there and waited a while, and Mr. Viereck came in and we told him we came to pick up this box, this material. There were some of my personal belongings in it which I wanted returned.

"Q. Is that what you told Mr. Viereck? A. Yes.

"Q. Just tell us in substance what you told him that you had come to pick up. A. Come to pick up this box.

"Q. Did you tell Mr. Viereck what was in the box? A. Well, I presume he knew what was in the box, because—

"Mr. Morosini: Now, just a moment, I move that be stricken.

"The Court: Did you tell him?

"The Witness: Yes.

"The Court: You just tell what was said.

"By Mr. Hickey:

"Q. What did Mr. Viereck say to you when you told him you had come to pick up the box? A. He told us he thought he had inherited the remains of the 'Make Europe Pay War Debts Committee,' that the committee had folded up, that he wondered why Mr. Dennett had sent it to him.

542 "Q. Did he mention any of the contents of the box? A. Yes, he asked about the mailing list.

"Q. What did he say? A. Some list Mr. Dennett had compiled for him.

"Q. What did Mr. Viereck say? A. He asked about the list, he said they were not complete.

"Q. Mr. Viereck said they were not complete? A. Yes.

"Q. What else did he say about the mailing lists? A. I told him he would have to get in touch with Mr. Dennett, so he would get in touch with Dennett. I had put all the lists in the box that we had completed at that time. There were several lists, 'Who's Who in Law and Medicine,' 'Who's Who in the Clergy,' 'Who's Who in Business and Commerce,' and 'Who's Who in Business and Industry.' There were to be four copies of this list delivered to Mr. Viereck.

"Q. Did Mr. Viereck ask you why they were not there. A. Yes, why they were not completed.

"Q. And you told him that you either had to get in touch with Mr. Viereck or he did? A. Yes, he did, and I had enclosed all the lists that we had completed at that time in the office.

"Q. Now, did you say anything regarding your

543 personal belongings? A. Yes, I did.

"Q. Did you ask Mr. Viereck for them? A. Yes, I did, there was also some committee stationery and envelopes and cards, and another mailing list for the German-American Board of Trade. I forgot to mention that.

"Q. You mentioned that you packed this box back here in Washington? A. Yes, I did.

"Q. Did you send it to Mr. Viereck, or where did you send it? A. Mr. Dennett sent it to Mr. Viereck.

"Mr. Morosini: Now, just a minute, please. If the Court please, I do not like to be interrupting you every two minutes.

"The Court: Yes, do not say that unless it was said between you and Mr. Viereck or your husband and Mr. Viereck.

"The Witness: Yes, sir.

"By Mr. Hickey:

"Q. Can you state to the Court and jury whether the box was sent by anyone else to Mr. Viereck?

"The Court: Now, wait a minute. Not your opinion, but whether you have knowledge of it.

"By Mr. Hickey:

"Q. Yes, your knowledge. A. My knowledge is
544 that Mr. Dennett sent the box to Mr. Viereck through the Railway Express."

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548 "Q. Have you ever seen Mr. Viereck anywhere else other than New York? A. Yes, I saw him twice after that.

"Q. In New York? A. In New York, yes.

"Q. Where? A. At 17 Battery Place, the German Library of Information.

"Q. Did any conversation take place at that time? A. No, just a general conversation.

"Q. Have you ever seen Mr. Viereck any other place than New York? A. Yes, I saw him in the office in the Bond Building in the Make Europe Pay War Debts Committee.

"Q. In the office? A. Yes.

"Q. Whose office was that? A. That is Mr. Dennett's office.

"Q. When did you see Mr. Viereck in the office of Prescott Dennett? A. In the summer of 1940.

"Q. On how many occasions? A. On two or three occasions. One time I saw them, they were in the inner office, discussing, or going over letters and material and correspondence. I did not over-hear the conversation.

549 I saw them together and I have also heard Mr. Dennett call Mr. Viereck in New York.

"Mr. Morosini: I object to this, and I object further to this entire line of inquiry as entirely irrelevant and immaterial to the issues here.

"The Court: Objection overruled.

"Mr. Morosini: Exception.

"By Mr. Hickey:

"Q. Now, you say you saw Mr. Viereck in Mr. Dennett's office. Is that the office of the Make Europe Pay War Debts Committee? A. That is right.

"Q. Did you have an opportunity to observe the work of the Committee? A. Yes, I did.

"Q. You were employed by the Committee? A. I was employed by the Committee.

"Q. In what capacity? A. In a secretarial capacity, and addressing franked envelopes and speeches—

"Mr. Morosini: (Interrupting) Now, just a moment. I object to this testimony.

"The Court: Objection overruled.

"Mr. Morosini: I think it is highly improper and irrelevant and immaterial.

550 "The Court: Objection overruled.

"Mr. Morosini: Exception.

"By Mr. Hickey:

"Q. Go ahead and describe your duties. A. Well, we

compiled mailing lists of Who's Who in Business, in Industry, Who's Who in Commerce, Who's Who in Law, Who's Who in the Clergy, and the German-American Board of Trade mailing list, and franked speeches were sent out to all the people on this list, in fact at one time the office was cluttered up with stacks of mail.

"Mr. Morosini: Just a moment, if the Court please. I object to this. It is unresponsive, irrelevant and immaterial.

"Mr. Hickey: I am asking her concerning the work of the Committee.

"The Court: The answer may stand.

"Mr. Morosini: Exception."

* * * * *

Upon cross-examination **Mrs. Webber** was asked if she saw on the walls of Viereck's study a large number
567-576 of photographs of certain prominent men, both American and European, and she stated that she was "just impressed by that one picture" of Adolph Hitler to which she had testified on direct examination to seeing on the walls of the study. Upon redirect examination, the following occurred:

576-577 "Q. Now, about these pictures. Let me ask you one more. Did you see a picture of Dr. Goebbels? A. I believe I did.

"Q. Did Mr. Viereck say anything about these pictures in his conversation? A. He mentioned they were people whom he knew.

"Mr. Hickey: That is all—one more question.

"Q. Do you remember which was the biggest picture you saw? A. The picture of Hitler was the biggest.

"Mr. Hickey: That is all."

Government witness **Mr. Webber** was on the stand when the following occurred:

593 "Mr. Hickey: May I have this marked for identification?

(Document is marked Government's Exhibit 57 for Identification.)

"Mr. Hickey: Your Honor, I would like to offer Government's Exhibit 57 for Identification, in evidence.

"By Mr. Hickey:

"Q. Well, first of all, Mr. Webber, have you ever seen this speech? (Document handed to the witness.) A. Yes, I have.

"Q. Where did you see it? A. In Dennett's office, it is one of the speeches that were mailed out there.

594 "Q. By whom, by you? A. By the staff and myself.

"Q. Do you know how many were mailed out? A. No, I don't.

"Mr. Morosini: Just a moment. I do not even know what the witness is talking about, and we are going ahead of him. Are you going to offer that in evidence?

"Mr. Hickey: We are going to offer it in evidence right now. First of all, I would like to give the title of the speech.

"Mr. Morosini: May I see it before you offer it?

"Mr. Hickey: I am identifying it, Mr. Morosini.

"The Court: It has been identified by the witness.

"Mr. Morosini: Yes.

"(Document is handed to Mr. Morosini, who reads it and returns it to Mr. Hickey.)

"Mr. Morosini: Thank you. I object to it on the ground that it is entirely irrelevant and immaterial to the issues in this case. It is a speech made by a Congressman printed in the Congressional Record.

"Mr. Hickey: And found in Dennett's apartment.

"Mr. Morosini: If that is true, I do not see where it is binding on this defendant, if the Court please, and I object to it.

"(Document is handed to the Court.)

595 "The Court: I do not remember any evidence that connects this.

"Mr. Hickey: I asked the witness if he had seen reprints of that speech and he said Yes, and stated that he had seen it in Dennett's apartment, they were being mailed out there.

"The Witness: In Dennett's office.

"Mr. Maloney: May I be heard on that?

"Mr. Morosini: Just a moment, if the Court please.

"Mr. Maloney: As to the purpose of this, this is a reprint which this witness testifies was being mailed out a great many of them were mailed out by the Committee, 'Make Europe Pay War Debts', the committee which this defendant founded.

"Mr. Morosini: Now, now, just a moment, please.

"Mr. Maloney: That is the testimony.

"Mr. Morosini: Just a moment. This does not appear to be a reprint at all.

"Mr. Maloney: That is one of the reprints the Committee was mailing out. I think it is perfectly admissible on that score.

"The Court: I do not think the testimony goes quite that far, does it?

"Mr. Maloney: Perhaps we can clear that up. Mr. Hickey might ask some more questions about it.

596 "The Court: Question the witness.

"By Mr. Hickey:

"Q. Have you seen copies similar to this. A. Yes, I have.

"Q. Where have you seen them? A. In Dennett's office.

"Q. Were they being sent out? A. They were being mailed out by the Committee, yes, sir.

"Q. Is this substantially the same? A. Substantially the same as those being mailed.

"The Court: It may be received.

"Mr. Morosin: I renew my objection on the ground it is immaterial and irrelevant, in so far as the issues are concerned.

"The Court: You may have an exception."

Witness **Hill** was permitted to testify, over the objections of appellant, that the appellant had obtained two mailing lists from him for one of which he received from appellant a "tip" of $100 and for the other of which he was paid $100 by appellant.

The witness **Hauck** was permitted to testify over
402- objections of appellant that mailing lists were de-
419 livered to him by the appellant—apparently some of the ones obtained from Hill—which were used in mailing out circulars describing the books or pamphlets published by Flanders Hall. There were several duplicates, and Mr. Maloney stated:

"I will offer this monument in evidence."

The two **Webbers** were also permitted to testify,
545, over the objections of appellant, that in a box sent
557 by express to appellant, without his consent, there
560 were certain mailing lists which had been prepared
584 for appellant.

In the direct examinations of the two **Webbers**, they were also permitted to testify that there were
551- many mail sacks, filled with franked envelopes con-
552 taining reprints from the Congressional Record which were in the quarters occupied by the "Make
600 Europe Pay War Debts Committee" in the Bond Building in Washington, and seven or eight people were employed in addressing the envelopes.

The Witness **Butler**, executive editor of *Liberty* Magazine, was under cross-examination when the memorandum from the files of the *Liberty* Magazine was identified by the witness, and it was received in evidence over the objections of appellant. The following then occurred:

1345 "Mr. Maloney: May I, with the permission of the Court, read this third page, it is very brief?

"The Court: Yes.

"Mr. Maloney: It is entitled 'Office Memo', on forms which the witness has testified were used by Liberty Magazine. It is addressed to Mr. Fulton Oursler
1346 from G. S. Viereck, copy to Mr. Harry Gray. The date is November 26, 1937. It also has Mr. Viereck's address, 305 Riverside Drive, written in pencil. The subject is:

"'*Re:* War Referendum.

"'Dear F. O. I had a long talk with Hamilton Fish about the proposed war referendum which was recently introduced in the House by Mr. Ludlow. On the day on which I saw Fish they had already 193 signatures. The same afternoon they received two more. They only need 218 to force the bill out of committee.

"'Hamilton Fish would be very glad to write an article with me on the necessity of a war referendum. You know,

of course, that in the Senate three such bills have been introduced: One by Mr. Graves; one by Senator Capper and one by LaFollette. The subject is timely and an article published on it would arouse considerable discussion. An article in Liberty might be the means of putting it over. See my previous Washington report in this connection. G. S. V'."

The witness **Butler** while continuing under cross-examination identified a letter dated July 6, 1940 as bearing the signature of the appellant and a reply thereto which were received in evidence over the objections of the appellant. The following then took place:

1349 "Mr. Maloney: Ladies and gentlemen, this Exhibit 73 in evidence, I will read you the last letter on the letterhead of George Sylvester Viereck, dated July 9, 1940, addressed to Fulton Oursler, Esq., Sandalwood, West Falmouth, Mass.:

"'Dear F. O.:

"'I have read with mounting astonishment the story of Hitler's alleged 'maid', Pauline Kohler, in Liberty and True Story.

"'I have, as you know, never concealed my admiration for the dynamic qualities of the German Chancellor
1350 (without accepting his ideology). In 1923 I said 'If he lives, Hitler, for better or for worse, is sure to make history.' In 1932 I recorded an interview with Hitler, which you had the courage to print, outlining his plans and ideas as he revealed them to me at Munich.

"'I had the honor of meeting the man who out-Napoleons Napoleon, both before and after his accession to power. I have studied his character. I could not reconcile the vicious statements made by the spurious house maid with Hitler's personality.

"'It is obvious to me that the article was written or ghost-written by someone who ingeniously put together certain facts collected from many sources and a great deal of purely fictitious backstairs gossip, picked up from the slop pails of the world. But I wanted to be sure of my facts before challenging the authenticity of your story.

"'I could not write directly to Germany, because the British piratically interfere with the U. S. mails. I, therefore, appealed for information to the Charge de Affairs of the German Embassy in Washington. The Charge very kindly communicated with the German authorities and was positively assured that 'Pauline Kohler' is unknown in Berlin and was never engaged at the 'Berghof.'

"'I am writing this, not on behalf of Chancellor Hitler, nor on behalf of the German Embassy, but solely on my own responsibility, as a student of current history and a frequent contributor to your columns. Knowing your passionate desire for exact information, I know that you will find some way to inform the readers of Liberty and True Story, that the house maid's tale would be classed not as Fact but as Fiction.'

1351

And the reply from Mr. Oursler, which reads, and it is dated July 14, 1940:

"'My dear Mr. Viereck:

"'I read your letter with interest but I cannot publish it because it has no official standing whatsoever. If the German Embassy wishes to make a statement, I shall be glad to publish it. If you wish to make a statement in any official capacity—as Hitler's representative in this country, or if you wish to identify yourself as Hitler's personal representative, it will have understanding and meaning. Otherwise, I do not see how I can publish your letter which, after all, is hearsay three times removed.

"'Faithfully yours,'

Bearing the initials: 'F. O.'

"Then the office memo to Mr. Pape from Mr. Oursler:

" 'If the attached letter meets with your approval I will send it to Mr. Viereck.'

"And Mr. Pape's reply to Mr. Oursler:

" 'Bravo!!! That's hitting him on the button. He may get sore but then truth hurts. It is high time that fellows like this, together with their nefarious activities, are effectively dealt with.'

"Mr. Morosini: I move, if the Court please, to strike this testimony introduced by the prosecution in the cross-examination.

"The Court: The motion is overruled.

"Mr. Morosini: May I have an exception?

"The Court: Yes."

VII.

Misconduct of Prosecutor Maloney.

Much of this misconduct of prosecutor Maloney is shown by his use of the book "Spreading Germs of Hate" in his opening and closing arguments to the jury and in his persistence in introducing evidence calculated to inflame and arouse the passions of the jury. Also, in his examination of Government witnesses Webbers, Hill, and Fish and Defense witness Butler. Extracts from the proceedings containing this material are contained elsewhere in this appendix. Some other instances are here collected from the transcript:

While **Mrs. Lundeen** was on direct examination, the following took place:

1178 "Mr. Maloney: May it please the Court, at this time so the record may be clear, we are not here to

try former Senator Lundeen. We realize that Mrs.
1179 Lundeen is interested in doing what she can to clear her husband's name, we realize that—

"Mr. Morosini: If the Court please, I take exception to that.

"Mr. Maloney: We are not in a trial of Senator Lundeen, we are trying the defendant Viereck.

"Mr. Morosini: The defendant did not inject Senator Lundeen into the case.

"Mr. Maloney: Senator Lundeen did. We are trying the defendant Viereck on a charge of propagandizing. These letters here have no bearing whatever."

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While counsel for appellant was delivering his opening statement to the jury, the following occurred:

212 Mr. Morosini: "Would you mind, Mr. Maloney, I find that your loud whispering is somewhat disturbing me.

213 "Mr. Maloney: It sounds like the Gettysburg address to me, your Honor, I didn't say anything."

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288 "The Court: I thought he had just read it and said he was going back to the other page.

"Mr. Morosini: He seems to be combining both his own comment and what he is reading.

"The Court: I have no copy before me, but I thought he was reading, up to that point.

"You may proceed.

"Mr. Maloney: I don't intend to overdramatize this thing, but at the same time, may it please the Court, I cannot bring myself to descend to the level of forensics employed by my adversary, Mr. Morosini."

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In his opening statement to the jury, Mr. Maloney said, among other things, that:

184 "The registration form of the Secretary of State requires, Question 11, 'A comprehensive statement of the nature of the business of the registrant.' This defendant felt so little of the intelligence of the American people that he answered that question by saying, 'Author and journalist,' and was content to rest upon that as complying with the requirements of a statute such as this.

"Now, there were five statements filed by this defendant altogether. You will be concerned with but three of them, but in those five statements which this defendant filed you will find that this defendant admits that in 18 months he received approximately $70,000 from three German sources. $70,000 in 18 months. The first of these sources was a small Munich newspaper, called the Munschner Neuester Nachrichten for which this defendant posed as the American correspondent, the first and only correspondent that paper ever had in America, incidentally. The second of these sources was the German Library of Information in New York, an admitted arm of the German Government, and the third was a man named Gisheler, not Chiseler, but

185 Gisheler, Wirsing, a resident of Munich in Germany who paid this defendant to publish a book here called, 'The One Hundred Families that Rule the Empire.'

* * * * *

186 "Before going further it might be well to introduce you ladies and gentlemen to this defendant, George Sylvester Viereck, Poet-Extraordinary, Author over a long period of time of a number of books, including such masterpieces as 'The Kaiser on Trial,' 'My First Two Thousand Years,' 'Salome, the Wandering Jewess,' and many others.

"And in addition to his literary efforts, self-proclaimed master of the insiduous art of propaganda, George Sylves-

ter Viereck, self-proclaimed master of the insidious art of propaganda, not alone in this war but in the last war as well, at which time he was also in the employ of the German Government, as you ladies and gentlemen shall see as well as hear.

"Mr. Morosini: Now, if the Court please, may I interrupt just a moment? I have been patient, and I do not like to interrupt Mr. Maloney when he is speaking, however, I believe this to be an opening. I believe that the function of an opening is to advise the jury what the Government intends to prove. I know of nothing in this indictment which charges any crime on the part of this defendant during the period of the last War, known to us as World War Number 1. I know nothing in connection with his activities at that time which is charged as a crime against this defendant.

"So far, if the Court please, I have heard more in
187 the nature of a closing than I have in the nature of an opening.

"I take an exception definitely to the comment up to this point.

"The Court: I will ask Mr. Maloney to be as brief as he can.

"Mr. Maloney: Yes, sir.

"I think it is proper at this time to introduce to you ladies and gentlemen just who this self-styled proponent of better relations between the German Government and our Government is."

* * * * *

189 "Mr. Maloney: I have no such intention, your Honor.

"Now, the Government will show in this case that the aim of the German propaganda, as it was carried out by this defendant, was three-fold, and is three-fold, or was, rather, up until December 7th.

"The first of these objectives was to strengthen Germany; the second to weaken her enemies; and the third to keep America out of war.

"Those are the three objectives of the present German propaganda. I might add that they differ in not one respect from the objectives of German propaganda in the last war, as we will show you.

"We will show you, and I submit that this is proper as bearing upon prior similar acts of this defendant, that this defendant was one of the three masterminds of the German propaganda in the last war. In fact, he was a member of what was known then as the German Propaganda Cabinet in this country, and here we have, as you will see, an identical picture, following the same lines, and seeking to attain the same objectives.

"As to the facts in this case, there was a small corporation in Scotch Plains, New Jersey, a small town near Plainfield, which was known as Flanders Hall, Incorporated.

"The Corporation had been organized by three young brothers named Hauck, H-a-u-c-k, organized in 1939.
190 Its purpose was to publish a book, not a very good book written by one of the Hauck brothers. The title of it was 'The Scarlet Fingers.'

"The corporation struggled along for about a year, not doing very much business, but during that period its president, Siegfried Hauck came to know the defendant Viereck.

"Viereck at that time was carrying on his nefarious activities in an apartment at 305 Riverside Drive, New York City, where he then lived.

"Mr. Morosini: Now, if the Court please, again I would like to refrain from interrupting, but I must take exception to characterizations of the type which are now being made by Mr. Maloney in his opening and I insist that the opening statement here is improper, that his characterizations are improper, and I take exception to them, and I ask your

Honor to instruct Mr. Maloney to confine his statement to a proper opening statement.

"The Court: I think you should limit yourself to the matters which you intend to prove.

"Mr. Maloney: May it please the Court, these are all matters of fact which will be proven by the very first witness, that Viereck was carrying on his propaganda activities at 305 Riverside Drive, that he met him there, that he worked there—that will all be testified to by the first witness.

191 "Mr. Morosini: The defense has no objection to Government counsel advising the jury of what facts he intends to prove. We do object, however, to Government counsel placing his own characterizations on those facts.

"Mr. Maloney: Well, these were activities which the Government charges were felonious, these activities which he was carrying on at 305 Riverside Drive, Mr. Morosini.

"Mr. Morosini: May I ask that Mr. Maloney be instructed to address his remarks to the Court or to the jury and not to me?

"The Court: Yes, address the jury, please.

"Mr. Maloney: So, ladies and gentlemen, we come down to August 3rd of 1940.

"Now, Viereck, as you will see in here, was by that time a very well-known author and poet. He was almost as well-known a propagandist, and Mr. Viereck had at that time, in August, 1940, a number of little books which he wanted to have published,—some eighteen in all. Mr. Viereck, for very obvious reasons, did not want to publish those books under his own name. Of course, as you will see from the definition of 'propaganda', it must be camouflaged, it must be concealed, so Mr. Viereck did not want to have his own name on those books."

* * * * *

Elsewhere in the opening, Mr. Maloney referred to Mr. Viereck as follows:

194 "Sinister character of this man's activities"

197 "Who apparently had the run of that office" (Lundeen's)

198 "A little too hot to handle"

199 "Our little proponent of better relations"

200 "The most amazing and undoubtedly the most contemptuous gesture and activity of this proponent of better relations"

201 "Master crimes"

"Laughed at them in scorn"

202 "To divide us and literally beat our brains out with his own clever propaganda"

In closing the Government's case, Mr. Maloney further stated:

1568 "In closing, let me remind you, ladies and gentlemen, that this is war. This is war, harsh, cruel, murderous war. There are those who, right at this very moment, are plotting your death and my death; plotting our death and the death of our families because we have committed no other crime than that we do not agree with their ideas of persecution and concentration camps.

"This is war. It is a fight to the death. The American people are relying upon you ladies and gentlemen for their protection against this sort of a crime, just as much as they are relying upon the protection of the men who man the guns in Bataan Peninsula, and everywhere else. They are relying upon you ladies and gentlemen for their protection. We are at war. You have a duty to perform

1569 here.

"As a representative of your Government I am calling upon every one of you to do your duty."

* * * * *

The following took place thereafter while counsel were at the bench and not in the hearing of the jury:

1590 "Mr. Cohalan: Now, another thing, this morning, at the conclusion of Mr. Maloney's summation, I did not seize the opportunity of seeking an exception to certain things that he said that were outside the indictment, and tended to arouse the emotions of the jury in a manner that I considered improper, so far as the defendant is concerned.

"Will your Honor allow me to note an exception to that fact on the record?

"The Court: Well, I think I must deny the exception upon the same ground, if it had been timely he might have wished to make some explanation of the remarks which you now complain of. You may have an exception to my denial of that exception.

"Mr. McGuire: Your Honor, there is no exception we might have made at that time which would have re-
1591 moved from the minds of the jury what he had said; no explanation would explain away what he said.

"The Court: No, not now.

"Mr. McGuire: Or, even then.

"The Court: But, if an exception had been timely made, whatever wrong inference might be drawn, it may have been corrected by an explanation.

"Mr. Cohalan: The only reason I am coming up here and asking you, or one of the most important reasons, is that I feel most strongly that this defendant should be accorded every protection that he is possibly entitled to under the circumstances. I am sure that your Honor agrees with me. I do not wish to think that because of my tardiness in taking the exception that the defendant may have lost any advantage which would accrue to him if that exception had been promptly taken, and for that reason—

"The Court: Well, I do not see how it would give more in the way of a record than the exception that you have to my denial.

"Mr. Cohalan: Your denial to giving us an exception?

"The Court: Yes.

"Mr. Cohalan: All right, thank you, sir."

VIII.

Bringing of Several Mail Sacks Partly Filled With What Appeared to be Papers Into the Court Room in Presence of Jury.

The witness **Dennett** summoned by the Government had been excused whereupon:

705 "Mr. Maloney: Will you recall the witness here? May we have the witness brought back to be asked one more question, sir? May we have him brought back, sir?

"The Court: Come to the bench.

(Side bar discussion had as follows:)

"Mr. Maloney: A lot of the speeches that were sent out in these sacks in the Hill case, I wanted to ask this witness if he would identify those sacks which were removed from his home on September 19, 1941.

"The Court: That would mean we would have to bring the sacks into the courtroom?

"Mr. Maloney: I have them right here outside the courtroom.

"Mr. Morosini: May I get in on this conference?

"Mr. Maloney: I thought you were here.

"Mr. Morosini: No.

"Mr. Maloney: The purpose is to have this witness Dennett identify certain sacks of mail which were removed from his home on September 19, 1941.

"Mr. Morosini: Oh, no, no.

706 "Mr. Maloney: Wait a minute, let me finish, containing the speeches which you asked us to produce.

"Mr. Morosini: They can produce the speeches, your Honor, without producing the mail sacks.

706 "The Court: I think I have fairly presented the picture to them. I have not asked every question here, but I asked about the different things. I think it should stand at that.

"Mr. Maloney: We are satisfied with it."

Government witness **Hill** was on the stand when the following took place.

707 "The Court: Mr. Morosini, are you finished?

(Certain mail sacks brought into the courtroom.)

"Mr. Morosini: Now, if the Court please, there was a conference at the bench at which Mr. Maloney asked to do this very thing, and your Honor told him he could not do it.

"Mr. Maloney: I do not agree with that at all.

"Mr. Morosini: Just a minute. You made an application for leave to do this and I objected to it and his Honor upheld my objection.

"Mr. Maloney: No, it was not that.

"Mr. Morosini: It is, nevertheless, contrary to the desire of the Court to have these things brought in here.

"Mr. Maloney: That is distinctly not so, sir.

"Mr. Morosini: Read the record.

708 "Mr. Maloney: That is distinctly not so.

"The Court: No, that is out. Take these out, we have no occasion for them here.

"Mr. Morosini: I say that this is deliberate misconduct on the part of Government counsel. It is prejudicial, and I think Government counsel should be censured for it.

"Mr. Maloney: May I take my offer of proof sir, through this witness, of these mail sacks?

"Mr. Morosini: I believe I am still cross examining this witness. You made your application to the Court and the Court made its ruling on that application. If there is any question about it, the record will speak for itself, and his Honor has his recollection.

"Mr. Maloney: This is not the first time that the record has been misquoted.

708 "The Court: Finish the cross examination, and then I will hear what will come after that.

"Mr. Morosini: May I have the copies of the speeches which I requested this morning?

"Mr. Maloney: That is just what I was having brought into the room by the sacks full, and now there is an objection to it. I am willing to give him all the speeches he wants.

"Mr. Morosini: I object to this further statement. We have the right—we have the record and we have your

709 Honor's recollection. Mr. Maloney made this application to your Honor and your Honor made the ruling. May I have copies of these separate speeches which I requested this morning?

"Mr. Maloney: The only place I know of where those copies of the speeches are now is right in those mail sacks and if Mr. Morosini wants them, he can have a dozen of them.

"Mr. Morosini: I take exception to that as being prejudicial. I made that request this morning, and I was assured I would have them this afternoon.

"Mr. Maloney: I am not going to take any copies out of those mail sacks.

"Mr. Morosini: It is not such a monumental task, if the Court please. There are only nine speeches which I have requested. May I have the copies of them?

"Mr. Maloney: You can pick them out of the mail sacks.

"The Court: Do you have copies of them, Mr. Maloney?

"Mr. Maloney: I do not have any copies here, but I am sure there are some in the mail sacks.

"The Court: The sacks are here, and you can send somebody out there to get the copies of them.

"Mr. Morosini: This, in spite of the fact that I made that request before the recess period, at which time I was assured that I would receive these copies?

"Mr. Maloney: I intended to offer all those sacks
710 in evidence. I am not going to take anything out of
710 those sacks, those sacks are intact, as they were when they were first brought to our attention.

"Mr. Morosini: I object to the reference to those sacks on the basis of the application made to your Honor and your Honor's ruling.

"The Court: I do not know of any obligation upon the part of the Government to supply that evidence.

"Mr. Morosini: The evidence is in the Government's possession, if the Court please, it is not in our possession.

"The Court: You can get it. I do not know whether it is in the hands of the Government, or not.

"Mr. Morosini: They said it was, I do not know either.

711 "The Court: They said it was in those sacks.

"Mr. Morosini: May I have a recess to seek to find or locate these speeches?

"The Court: If that is necessary.

"Mr. Morosini: Apparently it is, if the Court please. I do not know where they are. I know nothing about them. They are in the Government's possession, not ours. He examined the witness on these speeches. This witness has testified to them.

"Mr. Maloney: That is right; he has identified them by title.

"Now, here is one of them you wanted, Mr. Morosini, it is entitled 'The danger of invasion by J. Thorkelson,' con-

taining the remarks of one 'Hitler', which was in the Record. Here is one of the speeches which was referred to by the witness.

"Mr. Morosini: I believe that speech is in evidence, Mr. Maloney, and that is not one that I requested.

"Mr. Maloney: You do not want that?

"Mr. Morosini: That is in evidence, that is before the Court and the jury. The ones I am requesting are the ones referred to by Mr. Hill which are not in evidence.

By Mr. Maloney:

712 "Q. Now, I do not see any copies of those around,
712 but I know there are some in those bags, Mr. Morosini, if you would care to look.

"Mr. Morosini: Mr. Maloney insists on referring to those bags, in spite of all that has gone on here.

"The Court: I suggest that you cross-examine Mr. Hill otherwise, and later, someone can open those sacks and get the speeches, or you can get them from some other source, and I will allow you to have Mr. Hill back.

"Mr. Morosini: If the Court please, I have potted a course of cross-examination, and as I say at the recess this morning I requested copies of these speeches. There was no indication that I would not receive them. The Government said they had them and they would be glad to produce them. As a matter of fact, they would even be glad to put them in evidence.

"Mr. Maloney: I lived up to that. I produced the sacks, they are full of those speeches, and I intend to offer them in evidence.

"Mr. Morosini: I did not ask for sacks, I made a request for speeches.

"I might just as well bring the Department of Justice Building in here on that basis.

"The Court: Just a minute.

"Mr. Maloney: I will leave that for you, Mr. Morosini.

713 "The Court: Just a minute.

"You may cross-examine Mr. Hill upon other matters if you care to, and later, when the speeches are here, you can have him back for further cross-examination.

"Mr. Morosini: I would prefer to have the speeches at this time, if the Court please, and if we cannot do that I would like a short recess to try to locate them.

"The Court: The Court does not think it is necessary to take up the time in that way. That can be done when the Court is not in session.

"Mr. Morosini: May I take exception to this, if the Court please?

713 "I recessed here this morning with full information and full intention and every reason to believe that I would have this matter here this afternoon. I am prepared to go ahead in this fashion, and I would prefer going ahead in this fashion.

"The Court: They are not here, except in the bags.

"Mr. Morosini: May I have a recess to get them out? If I can?

"The Court: I do not think it is necessary. I will give you the opportunity when the case is over, when they have been found.

"Mr. Morosini: I would like to withhold any fur-
714 ther cross-examination of this witness until I have the matter to which he testified on direct examination.

"The Court: Very well, Mr. Hill, you may step out. Call another witness."

Later the same day of the trial there was a conference at the bench after the jury had been excused where proceedings were had:

783 "Mr. Morosini: We should like to have those speeches, if the Court please.

"Mr. Maloney: What I will do is, I will go down—

"Mr. Morosini: I will do the work, if there is any work attached to it.

"Mr. Maloney: Here is the situation, those speeches are in those bags.

"The Court: Have you got any loose ones?

"Mr. Maloney: I think we may have, sir. I think there may be some lying around the office. I have never brought them over to the Court. The reason I do not want to take them out of the sacks without everybody being present, is that they are still as they were when they were taken out of Dennett's home.

"Mr. Morosini: You can have sixteen people present, I do not care.

"Mr. Maloney: That is my reason.

"The Court: Why not have a representative from each side go to the bag and pick out the speeches?

"Mr. Morosini: Perfectly agreeable. Let us do it right now.

783 "Mr. Maloney: Here is another suggestion, we may have some lying around the office, I do not know whether we have them all, but we have got some extra ones, and perhaps they would be sufficient.

"The Court: Perhaps this would be the quickest and the simplest way.

"Mr. Maloney: All right; it is agreeable to me.

"The Court: And let there be at least one representative from each side present.

"Mr. Morosini: I do not care who is there when it is being done."

IX.

Appellant as an Author and Journalist.

There was introduced in evidence a book written by the appellant under the title "The Seven Against Man", and it had a preface written by Government Witness Hauck. The following took place:

1363 "Mr. Morosini: If the Court please, at this time I would like to read a few excerpts from the preface in this book, 'The Seven against Man,' by George Sylvester Viereck, published by Flanders Hall.

"The Court: You may do so.

"Mr. Morosini: This part is from the preface:

" ' "The Seven Against Man" was published originally in "Books Abroad", the sprightly literary quarterly, edited for the University of Oklahoma by Roy Temple House.

" 'The author of some twenty books, published both here and abroad, Viereck has been called "The stormy petrel of American literature."

" 'He first burst forth upon the literary horizon with "A Game at Love and Other Plays," preceded by a small volume of extraordinary verse, "Gedischte," with a preface by Ludwig Lewisohn, and followed by "Ninevah and other poems, (Moffat Yard & Co., 1907)", of which James Huenker wrote in the North American Review, "shot through with the splendors of Heine, Swinburne and Keats," (My Flesh and Blood—A Lyric Autobiography with Indiscreed Annotations," (Liveright, 1931)) presents Mr. Viereck's collected verse, uniquely vivified by
1364 annotations in which the poet psychoanalyzes himself.'

" 'His first novel, "The House of the Vampire," attracted wide attention for its daring treatment of Intellectual vampirism as a symbol of genius. The startling

tale was subsequently dramatized by the author in collaboration with Edgar Allan Woolf.

" 'Mr. Viereck's best known work of fiction, "My First Two Thousand Years—The Autobiography of the Wandering Jew," written in collaboration with Paul Eldridge, aroused the admiration of Thomas Mann and George Bernard Shaw. This chronicle of the Wandering Jew, with its two sequels, "Salome—The Wandering Jewess", and "The Invincible Adam", has been described as "a modern Encyclopedia of Passion." All three books, best sellers over a period of many years, are available in popular editions (Gold Label Books). Mr. Viereck's hero, Cartaphilus, is cousin-german to Faust and Don Juan. All three books are profoundly influenced by Freud, one of the seven against whom Mr. Viereck now rebels.

" 'The World War diverted Mr. Viereck from poetry to politics. ("Spreading Germs of Hate,") an impartial study of war propaganda (Liveright, 1931) which first appeared serially in the Saturday Evening Post, won plaudits from Colonel House and many distinguished historians, and remains an invaluable guide for the student of public opinion. Mr. Viereck's other historical studies, "The Strangest Friendship in History—Woodraw Wilson and Colonel House (Liveright, 1931)" and "The Kaiser on Trial (Greystone Press 1937)" provoked considerable controversy.

" 'The hitherto untold secret of the break between Colonel House and Woodrow Wilson appears as Mr. Viereck's contribution to the collection of international scoops. "The Inside Story. (Prentiss Hall, 1940)." The British Edition of "The Kaiser on Trial (Duckworth, 1938)" boasts of four prefaces: one by George Bernard Shaw, one by James W. Gerard, one by Colonel House and one by the author. Mr. Viereck is the editor of "As They Saw,

Us," the story of the American Army in the World War, with prefaces by Ludendorf and Foch, and other significant volumes.

" 'Mr. Viereck has met and won the confidence of many of our greatest contemporaries. "Glimpses of the Great" (Macaulay, 1930) vividly describes his meetings with such diverse personalities as William II, Sigmund Freud, Marshal Hindenburg, Albert Einstein, Professor Eugen Steinach, Marshal Foch, Marshal Joffre, Arestide Briand,
Georges Clemenceau and George Bernard Shaw. It
1366 is not merely a book of interviews, but rather an at-
tempt to penetrate the minds of others in search of the Unknown God and of an answer to the eternal query: "To what Tune Dances the Immense?" By an odd inadvertence, this work does not include the account of Mr. Viereck's audience with Pope Pius XI, and his first interview with Adolf Hitler.

" 'More far-seeing than Dorothy Thompson, Viereck predicted in 1923: "If he lives, Hitler, for better or for worse, is sure to make history." He admires only the dynamic genius of Hitler without embracing his totalitarian philosophy. Viereck's "The Temptation of Jonathan" (Christopher Publishing House, Boston, 1938) summarizes the great debate between Fascism and Democracy, and states in simple and unchallengeable terms the authentic gospel of Americanism.'

"Mr. Maloney: Mr. Morosini, are you reading from the foreword of this book?

"Mr. Morosini: I stated before I read it that I was reading from the preface, and I am still reading from the preface.

"Mr. Maloney: Well, your Honor, it seems to me that the book itself was offered on the theory that it was a writing by the defendant.

"Mr. Morosini: I propose to read a portion of
1367 the writing by the defendant.

"Mr. Maloney: Now, we are having read to the jury the mouthing of some third person, some unidentified third person, who is talking about Viereck, and apparently not very well acquainted with him, because he is saying all these things about him. I object.

"Mr. Morosini: The book is in evidence. I think I am entitled to read from it. Is that right or is that not right?

"The Court: You may proceed.

"Mr. Morosini: All right.

"(Reading)

" 'Mr. Viereck was the editor of "International"; founder and editor of "Fatherland" and its successor "The American Weekly"; associate editor of "Current Literature," and advisory editor of the MacFadden Publications. Until New York's German Library of Information, a clearing house of social, economic and cultural knowledge was compelled to close its doors, he was its literary advisor. Many of Mr. Viereck's writings have appeared in Liberty, Saturday Evening Post and the Hearst newspapers. The author proves that he is still capable of writing in two languages by acting as the American correspondent of the Muenchner Neuests, Nachrichten.'

1368 "Mr. Maloney: You might as well tell us who wrote the foreword, as long as you are reading it.

"Mr. Morosini: I have no objection. I believe Sigfried Hauck wrote it.

"Mr. Maloney: Sigfried Hauck? You mean the man who testified here?

"Mr. Morosini: At the conclusion of the preface there appears the name 'Sigfried Hauck.'

* * * * *

Witness **Butler** was called as a witness for appellant, and after being duly sworn, Mr. Butler testified that he was the executive editor of *Liberty* Magazine, and the following proceedings were had:

1325 "Q. Now, can you tell us what if any work Mr. Viereck did for Liberty Magazine and the approximate time? A. He did a great deal of work for Liberty Magazine for a period from some time shortly after
1326 1925, I am not sure just when, until two or three years ago, and I am not sure of that time.

"Q. Now, can you tell us what kind of work Mr. Viereck did for Liberty? A. He wrote original articles, he edited and prepared for publication articles to be signed by others than himself. Those were his chief activities for Liberty.

"Q. Now, can you tell us some of the articles that he wrote? A. He wrote a great many articles and it is a little hard for me to remember any individual ones. I recall one series exposing Communistic activities called 'The Web of the Red Spider,' or some such title.

"I remember an interview with Hitler which he reported for Liberty. I remember an article on rejuvenation. These are just fragmentary memories.

"Q. Just give us whatever your present memory is. A. I seem to remember an interview with Hindenburg. I am not sure whether that was his or not. There were so many it is very hard to remember any individual instances.

"Q. Can you tell us how much Mr. Viereck was paid for these articles? A. No. I haven't any first-hand knowledge of it. I would have to refresh my memory.
1327 There are records of payment to show, of course.

"Q. Do you know whether or not Mr. Viereck wrote any books? A. Books?

"Q. Yes. A. Oh, yes.

"Q. Can you tell us what books he wrote? This is, books within your memory and knowledge. A. You mean whether or not they were published in Liberty?

"Q. That is right. A. Any of them, any books?

"Q. Yes, any books that you know the defendant wrote? A. Oh, I remember 'The Trial of the Kaiser.'

"Q. 'The Kaiser on Trial,' is that the one you are referring to? A. Yes.

"Q. Do you know whether or not Liberty Magazine made any agreement or contract for publication rights to that book? A. I don't know. I think the record would show that. I am not sure about that. The manuscript was considered for Liberty. I don't know what the financial details were.

1328 "Q. Can you recall any other book that Liberty was interested in? A. A book which it seems to me was called 'The Strangest Friendship in History,' or some such title, about Woodrow Wilson and Colonel House. There were a number of others I can't remember offhand.

"Q. Do you recall any of the financial details in connection with that book? A. No. I have no occasion. I had nothing to do with financial details at that time.

"Q. Now, do you know whether or not Mr. Viereck wrote for any other publications besides Liberty? A. I have no positive knowledge. I am under the impression that he did, but I haven't any accurate knowledge on the subject."

1331. "Q. This article which you have just identified, Defendant's Exhibit, for identification, No. 88, 'Shaw Looks at Life at 70', you have identified that

1332 as an article written by Mr. Viereck? A. Yes.

"Q. I show you this article 'What Life Means

to the Kaiser,' in the Liberty Magazine of October 15, 1927. Can you identify that as an article written by Mr. Viereck? A. Yes.

"Q. And this article, 'The Pope at Home,' in the January 21, 1928, issue. Can you identify that as an article written by Mr. Viereck? A. Yes.

"Q. An article entitled 'Foch on Peace and War,' in the March 10, 1928, issue of Liberty. Can you identify that as an article by Mr. Viereck? A. Yes.

"Q. An article "Forging Swords into Dumbbells," in the May 5, 1928, issue of Liberty. Can you identify that as an article by Mr. Viereck? A. Yes, sir.

"Q. An article entitled 'The Tiger Looks at the Post War World, a Portrait of Clemenceau in 1928,' in the July 10, 1928, issue. Can you likewise identify that? A. Yes, sir.

"Q. An article entitled 'Joffre, Master or Puppet,' in the September 1, 1928, issue, can you likewise 1333 identify that? A. Yes.

"Q. These have all appeared in Liberty Magazine? A. Yes.

"Q. An article entitled 'The Queen of the Belgiums Looks at Life,' in the December 22, 1928, issue of Liberty. Can you identify that as an article by Mr. Viereck? A. Yes.

"Q. An article entitled 'A Machine with a Soul,' by George S. Corners, can you identify that as an article written by Mr. Viereck? A. I would assume that to have been written by Mr. Viereck because that was a name he sometimes used; I mean, I am almost certain it was written by Mr. Viereck.

"Q. Do you know under what circumstances, or, what circumstances brought about the use of that name? A. It is a very common custom when people write on subjects a

little out of their usual line, or when they write a great deal, to avoid having their own name appear too monotonously, they use another name. It is a very common practice.

"Mr. Maloney: What is the title of that by George S. Corners?

"Mr. Morosini: 'A Machine with a Soul.'

"Mr. Maloney: May I see that?

1334 "Mr. Morosini: I offer these articles in evidence.

"Mr. Maloney: May I see that?

"Mr. Morosini: Yes.

"Mr. Maloney: May it please the Court, the Government has never maintained anything other than that this man was a prolific writer, we have always said that. My only objection to the receipt of these various articles is because it burdens the record with a lot of stuff. I am willing to concede that he wrote a lot of articles, or, whatever the number is, for Liberty. I have no desire to conceal that fact."

* * * * *

1356 "Mr. Morosini: Now I would like to call the jury's attention to Defendant's Exhibit No. 101. It consists of two articles by Franklin Roosevelt, Governor of New York. These are the manuscripts. Each one bearing the notation, 'Rewrite, G. S. Viereck,' Rewrite by G. S. Viereck on both manuscripts.

"I would like to call your attention to an article entitled 'Blessed are the Peacemakers, but—' by George Sylvester Viereck.

"The manuscript was 'How to keep out of war,' by Edward Mandell House, and the authorization here,

1357 'Colonel House has authorized Mr. Viereck to make all financial arrangements with Liberty on this material in a letter on file.'

"Mr. Hickey: What is the number of that exhibit?

"Mr. Morosini: This is all 102.

"I call your attention to a series of articles called 'The Wilson-House Series' for which was paid to George Sylvester Viereck the sum of $7,220.

"Mr. Maloney: Mr. Morosini, am I correct—I think I must object to this as being repetitious, unless Mr. Morosini can point out that these articles were not included in the list which he already placed in evidence.

"Mr. Morosini: I don't know whether they are or not.

"Mr. Maloney: It might be wise to check up.

"Mr. Morosini: I think these documents are in evidence, if the Court please, and I am entitled to refer to them?

"The Court: Yes.

"Mr. Morosini: An article published under the title 'Is The National Youth Administration Communistic,' for which the sum of $400 was paid to George Sylvester Viereck.

"An article published under the title 'What the Dies Committee Overlooked, Part III,'' indicating the sum of $500 paid to George Sylvester Viereck.

"An article entitled "Will the Catholic Church be Hitler's Waterloo?' and a notation, 'Accepted against an advance of $1,000.'

1358 "Another article, 'Was Dr. Wirth Right or Wrong' by George Sylvester Viereck; 'amount received $500.'

"A series of articles here, 'The memoirs of Colonel Edward M. House, appearing in several parts,' by George Sylvester Viereck.

"Another article 'Is Japan Sabotaging the Nicaragua Canal?' by George Sylvester Viereck, published under the title, 'Is Japan Sabotaging our New Canal.'

"An article 'It Can Happen Again,' by George Sylvester Viereck.

"I have no further questions."

X.

Appellant's Offer of Evidence Concerning the Manner in Which Other Registrants Answered the Questions on Their Initial and Supplemental Registration Forms.

The witness **Adams** attended pursuant to a sub-
1230 poena requiring the production of the initial and supplemental registrations filed by other registrants on the forms prepared by the Secretary of State and after being duly sworn, the following took place:

1230 "Q. And you have attended here pursuant to subpoena? A. Yes, sir.

"Q. And that subpoena required you to bring certain documents and papers? A. That is right.

"Q. Have you brought them all with you?

"Mr. Maloney: Now, just a moment. At this
1231 time, may we approach the bench and have an offer of proof on this particular subpoena?

"Mr. Morosini: Now, if the Court please, I would first of all like to know if we have the papers here. We cannot very well make an offer of proof if we don't know what papers are here.

"The Court: Let him answer the question.

"The Witness: I have certain of the papers; others I did not bring with me.

"By Mr. Morosini:

"Q. You did not bring others with you? A. That is right.

"Q. Can you tell us why you did not bring the others with you?

"Mr. Maloney: I object to that.

"Mr. Morosini: We subpoenaed them; he did not bring them, and I think we are entitled to that.

"Mr. Maloney: We object to the production of the papers.

"Mr. Morosini: Who are you to object to the production of the papers? We have a subpoena here signed by the Court requiring their production.

"The Court: Just a moment. Give me just one little chance. Will you answer that question?

"The Witness: Would you repeat the question, please.

"By Mr. Morosini:

1232 "Q. Why didn't you bring certain of the papers, I believe was the substance of the question? A. I understood that the Government intended to protest the introduction of certain of these papers, and since they were in such volume, the Department, since it has a great deal to do in these days, decided to wait for a decision on this question before any further action.

"Q. When was this subpoena served on your department, do you know, Mr. Adams? A. I don't have the date.

"Mr. Morosini: May we have the date of the original subpoena on the record? It appears from the Marshal's return, if the Court please, that the subpoena was served on February 14, 1942. I demand at this time that all of the papers be produced.

"The Court: I think it might be well to find out now what papers he did bring.

"By Mr. Morosini:

"Q. What papers did you bring, Mr. Adams? A. I have with me the registration statements, all the supplemental registration statements, and filed by Mr. Viereck

pursuant to the Act of June 8, 1938, as amended, which requires the registration of agents of foreign principals, and all correspondence between Mr. Viereck, his lawyers, and the Department. I also have with me all press re-
1233 leases issued by the Department of State relative to the Act in question.

"I believe that is under point 3 in the subpoena.

"Q. In other words, you have brought everything except what is— A. (Interrupting)—and I have also certain correspondence that is referred to in point 2, of the subpoena, I believe, relating to a letter which Mr. Viereck wrote to the President in the latter part of 1933 and subsequent correspondence relating thereto.

"Q. So that the only thing you did not bring with you is the material required in portion 1 of the subpoena, is that right, all of the registration statements? A. All of that material except Mr. Viereck's. I have Mr. Viereck's with me.

"Mr. Morosini: Now, if the Court please, we demand at this time that these statements be brought.

"The Court: I will hear you at the bench.

(Side-bar conference was had as follows:)

"Mr. Morosini: We want every registration statement and supplemental registration statements filed by everybody with the State Department pursuant to the act of June 8, 1938, requiring agents of foreign principals to register. We have examined every one of these statements ourselves—not us personally but we have had them
1234 examined for us, and we have received a detailed report as to their contents.

"We are satisfied from that examination that every one who registered followed the same course and answered the questions on the registration forms in precisely the same form as did this defendant.

"We say that there are approximately 560-odd statements on file. I would say that about—again approximating—over 500 of those registrants filed in the same form and in the same manner that this defendant did.

"Now, we contend that in view of this fact, the introduction of all of these statements in evidence is material on the question of the Department of State's own interpretation of its own regulation. We propose to show that
1234 the statements filed by this defendant are entirely consistent with the Department of State's interpretion of the statute and their own regulations.

"I might also add that we have subpoenaed certain other registrants themselves in connection with this line of testimony; we have not subpoenaed all of them, but we have just selected a few here and there.

"The Court: Do you intend to show that the Department has put its stamp of approval upon these various statements?

"Mr. Morosini: By accepting them, by keeping them,
1235 by not questioning them particularly when it appears that the overwhelming majority—over 500 of them—

"The Court (Interrupting): Does the Act require the Department of State to determine their truthfulness?

"Mr. Morosini: There is no question of truth involved.

"The Court: The object is to make a public statement, and a registrant can make any kind of a statement that he wants to.

"Mr. Morosini: We are not on trial for false registration; we are on trial here for an omission on a registration statement.

"The Court: Which constitutes a false statement.

"Mr. Morosini: Oh, no; we are asked to give a comprehensive statement of the nature of our business, to

which we answered "Author and journalist." It is charged here that this defendant did not include certain other things in that answer, which the Government contends he should have included.

"We propose to show that by the Department of State's own interpretation of that regulation, nothing else was required to be put in the statement.

"The Court: Haven't they said anything about that in their own regulations?

"Mr. Morosini: No.

"Mr. Hickey: Yes, they have. The State De-
1236 partment regulation reads that the acceptance of a registration statement shall not be deemed to be a compliance with the Act.

"Mr. Morosini: That is perfectly all right—

1236 "Mr. Hickey (Interrupting): May I finish my statement? I would like to finish my statement. Furthermore, the Department of State is not in any position to investigate the truth or falsity of the statements made by the registrant.

"Mr. Morosini: Don't try to confuse the issue; it is not a question of false registration; it is a question of omission—it is a question of what is required of this registrant.

"The Court: But if there is a willful omission of material, isn't that in effect false, or actually false?

"Mr. Morosini: We claim this, that even assuming that this work was done for a foreign principal, he was still not required to put it in. We propose to show that that is the Secretary of State's own interpretation of that. This evidence is material.

"The Court: I fail to see how the interpretation of various registrants could be forced upon the Secretary of State, and how the Court should say that what these

registrants have done must be taken as the interpretation of the Secretary of State.

"Mr. Morosini: When the Secretary of State—

1237 I assume there is no entrapment as the purpose of this statute, but that the statute is there for the purpose of making public the contracts with foreign principals—

"The Court (Interrupting): So that propaganda activities may be made known.

"Mr. Morosini: That is exactly right. So they ask the question, they ask a 'comprehensive statement of the nature of your business.' The registrant answers 'Author and journalist.' We contend that that is a proper answer; that all the Secretary of State required in answer to that question was that the registrant state the usual, normal, occupation, trade, calling or profession.

"We propose to show through the medium of these statements that that is also the interpretation placed on that requirement by the State Department itself.

"The Court: I do not see how that can follow. It might indicate similarity of understanding by the registrants.

1237 "Mr. Morosini: Isn't that important?

"The Court: I do not see how the view taken by the registrants can be regarded as the view of the interpretation of the Secretary of State.

"Mr. Morosini: Isn't that important on the question of intent, if the Court please? If, let us say 520 out of 565 registrants answered a question in the same way, isn't

that material and important on the question of

1238 intent, and if 520 out of 565 understood a question in one way, certainly it is very important in the showing that this defendant did not willfully do something; and certainly we are entitled to establish this as a basis for the inference.

"It is up to the jury to say whether they adopt that inference or not. I think on that question this testimony is vitally important.

"The Court: I don't think it can be received.

"Mr. Hickey: Your Honor, may I just direct your attention to regulation 5."

"The Court: Yes. (Reading) They have guarded against that very thing. They say in Section 5: 'Acceptance by the Secretary of the Registration Statement submitted for filing shall not necessarily signify full compliance with the Act on the part of the registrant, and such acceptance shall not preclude prosecution as provided for in the Act for false statement of the material fact or the willful omission of a material fact required to be stated therein.' They have taken care of this very thing.

"Mr. Morosini: Perhaps I have not made myself clear. We are not concerned with that problem at all. Here is the only problem that we are concerned with, the question of the supplemental registration form which requires the registrant to give a comprehensive statement of the nature of the business of the registrant.

1239 "We contend that the only thing that that question requires a registrant to do is to state categorically his normal usual occupation or calling; in other words, if he is a lawyer, he should say that he is a lawyer; if his occupation has not changed from the time of 1239 the original registration he is permitted to use the word 'the same.'

"We contend that that is all that the question asks of a registrant. We contend further that the Department of State by its own course of conduct agrees entirely to this, and we would like to show that.

"The Court: This is to enlighten the public as to propaganda activities, and if that view is taken as to that,

a man can say that he is a lawyer and could conceal from the public the fact that his main activity is propaganda for a foreign country.

"Mr. Morosini: Absolutely not. If the Court will examine the remainder of the registration statements and the supplemental registration statement, it requires all of the information in connection with his agency for the foreign principal, all the other information. After all, when a person comes along to register, all he can do is to look at the statute and the regulations and then act accordingly.

"Let us come back to the original registration for a moment. That question is asked on the original
1240 statement. Quite obviously, when he registered, he has not done anything for his foreign principal as yet. He is just starting off; he has just made his contract with his foreign principal.

"The Court: That does not make any difference. He may have been an agent for 20 years when this Act went into force, and then they require him to register.

"Mr. Morosini: If that was his normal course of business, yes, but let us take this situation,—let us say that a lawyer makes a deal with say the Government of Peru to foster public relations and to build up good will for Peru in the United States. He has been a lawyer all his life; he has never done any work for the Government of Peru at all; he has made his contract, and he writes down to the Department of State and says 'I have made this kind of a contract, what shall I do?'.

"They send him this form, and he looks at this question. Now, what other answer is required there except 'lawyer',
—particularly when he reads the statute, Section 2
1240 of the statute, which does not require this particular information at all, and which sets forth all of those facts in the original registration which are to be material

facts in connection with the employment for a foreign principal.

"That is the point I am making that he would put 'Lawyer' down there.

"The Court: What is the purpose of using the word 'comprehensive'?

1241 "Mr. Morosini: I don't know, but I ask your Honor—

"The Court (Interrupting): It is not reasonable to suppose that they were going to allow in answer to that question an answer which would be one of concealment.

"Mr. Morosini: Of course not.

"The Court: And if he concealed his propaganda activities because he calls himself a lawyer or a doctor—

"Mr. Morosini (Interrupting): Of course not. There is no question as to that. There are other questions here which bring that all out. You have to read the registration statement in conjunction with these statutes.

"You won't find anywhere else in the statute the requirement to set forth specifically the comprehensive nature of his activities, and you find nothing there which does not require him to give the comprehensive nature of those activities. In the registration statement he has to give the name of his principal, the name of his job with his principal, attach a copy of the contract with the principal, state the compensation from the principal, and so on and so forth. They require all of the details in connection with his employment, but the comprehensive statement of the business of the registrant, we contend, that can only ask for one thing, and that is the man's usual and normal business, trade or profession.

1242 "To come back to the lawyer and the Peru situation, he has been a lawyer all his life, he gives all of the details of his contract with the Government of Peru,

he comes down to that question, and he has not done anything for the Government of Peru yet, so therefore the only occupation that he can state there—he has told the Government that by his contract with the Government of Peru in the other portion of the form, and the only thing he can state there is his normal calling, namely that he is a lawyer.

"The Court: Would you say that a lawyer who never tried a case, and a lawyer who gave his time entirely to lobbying here in this City, would be answering truthfully if he said that his business was that of a lawyer?

"Mr. Morosini: If he gave up all of his time to lobbying, I would say not, but there are lawyers in New York City, on the other hand, who still maintain the practice of the law, and a successful practice who still, at the same time, have represented foreign principals for public relations work. Their normal occupation is that of a lawyer, and that is exactly what we want to establish.

"The Court: I cannot let you do it.

"Mr. Morosini: This testimony goes right to the heart of this case.

"The Court: I don't think it does.

1243 "Mr. Morosini: I think I have just about talked myself out on it. If your Honor insists, there is nothing further I can do except to take an exception to your Honor's refusal to permit the proof.

"May I make this suggestion? Could we offer this proof to your Honor in the absence of the jury in support of our contention on the law?

"The Court: I think that is asking the Court to accept the interpretation of other registrants.

"Mr. Morosini: No; I am asking your Honor to accept only one interpretation, and that is the interpretation of the State Department.

"The Court: If we have a law here in the interests of the American Public as to the activities of certain persons

who are representing foreign agencies or Governments, it would be far from reasonable, in my judgment, to allow those registrants to determine the meaning of the statute and the policy of the enforcing agencies of our Government.

"Mr. Morosini: We do not intend that they should interpret it, but we certainly say that either of two
1243 things are true; if the Secretary of the State Department sits back and permitted five hundred and some odd people out of 565 to register in this form, then either of two things are possible—either they have been derelict in their duty, or else these registration statements
1244 are consistent with the Department's own interpretation of that requirement. These are the only two alternatives, and I certainly don't charge dereliction of duty in the Department of State.

"The Court: It is almost like a Recorder of Deeds. He has to take the instrument that is presented, if it is in due form. He reads it and files it and that is all that the Secretary of State can do.

"Mr. Morosini: He is directed by the Act to administer the Act.

"The Court: And that is to file it and make it public, but not to determine the truthfulness of it.

"Mr. Morosini: There is no question of truth or falsity involved here. The only question is, what did they mean when they asked that question? What information did they want? That is the only question involved in this indictment.

"The Court: I think you have fully made your offer of proof. I cannot see it and I must decline it, and you may have your exception, of course.

"Mr. Maloney: For the record, we will make an objection.

"The Court: Yes.

"Mr. Morosini: Could we have some specific registration statements of some specific individuals?

"Mr. Maloney: I think the same objection would hold, as to any other registration statement.

1245 "The Court: I think the ruling will necessarily be the same.

"Mr. Morosini: Let me say for the record that we subpoenaed five witnesses selected at random who filed registration statements with the State Department, for the purpose of testifying along these lines, upon the basis of their now registrations, how they answered them, how they read the question and how they answered the question. I mean, after all, if this question is put in here and if nobody understands this question, why in the name of common sense should this man go to jail because he did not understand it? I don't see that. I think that there is a great element of unfairness here. If they propounded a form here which is confusing to themselves and confusing to the public generally, and they start putting people in jail—

"Mr. Hickey (Interrupting): There is no confusion in that form.

"The Court: My ruling would have to be the same.

"Mr. Morosini: May I have an exception?

"The Court: Yes."

XI.

Proceedings With Respect to Offer of Proof by the Appellant as to the Practice of Mailing Reprints From the Congressional Record.

The prosecution placed in evidence before the jury—over objections of appellant that it was irrelevant, immaterial and incompetent—that the witness Hill had had inserted in the Congressional Record various non-interventionist material and had obtained reprints thereof which

he had mailed out at the request of Senator Lundeen and the appellant or at the request of Dennett of the "Make Europe Pay War Debts Committee". Also, through the witnesses, Mr. and Mrs. Webber, that they had worked for said Committee in mailing out such reprints from the Congressional Record under the franks of some Senators and Congressmen.

1371 Witness **Loeffler**, who appeared with certain records from the Government Printing Office was called by the appellant. The following then occurred:

By Mr. Morosini:

1371 "Q. And you have appeared here with certain records pursuant to a subpoena? A. I have.

"Q. Are these the records over here (indicating)? A. They are the records.

"Q. Have you prepared a chart analyzing the material contained in these records? A. In part. That is, in so far as we had time to do it. It was impossible to make a chart covering everything in the length of time we had to prepare it.

"Q. And which is the chart? A. The chart is the roll.

"Q. This one here? A. That is it.

"Mr. Hickey: Your Honor, may I at this time

1372 call for an offer of proof at the bench as to what use the defendant intends to make of these records?

"Mr. Morosini: No, I take exception to that, if the Court please. I think we are entitled to present our testimony in the proper fashion.

"The Court: Let us see what the questions are and then I will entertain your motion.

"By Mr. Morosini:

"Q. I show you this chart and ask you if you can tell us what it is.

"The Court: Just a general description.

"The Witness: Of course, all the charts here have not been completed to that extent, but in so far as we have completed it, it shows the jacket number, which is the number of the job; our office number—

"By Mr. Morosini:

"Q. Do not give us the details, Miss Loeffler, just generally what it consists of. A. It consists of the title of the speech; the amount of charge for that particular speech; the name of the person, that is, the name in which it was ordered; the name of the individual ordering the speech for the member of Congress; the name of the person who paid for the speech, that is the individual who presented the payment in question; in whose name it was paid, and the number of copies of the franked envelopes, and

1373 in whose name the frank was.

"Q. And these speeches relate to reprints of speeches from the Congressional Record, is that correct? A. That is correct.

"Q. Now, can you tell us just what period the charts cover? A. Well, we have started with charges, that is, with orders that were placed in October, 1941, and worked backward as requested by the defense counsel, because he was aware of the fact that we would not be able to complete the entire thing, so he suggested we work backward.

"Q. Can you tell us how far back you have gotten? A. We have November, October, and I might say that there are a few places that may not, in these months, be completely filled out because we hadn't gotten to filling them out.

"But, from my records, I would be able to supply information on any particular ones that are missing.

"Q. And you have all of your records here, Miss Loeffler? A. I have all of my records here.

"Mr. Morosini: I offer these charts in evidence.

"Mr. Hickey: May I renew my request at this time?

"The Court: Yes, you may make your proffer at the bench.

1374 "Mr. Morosini: I am offering these in evidence. Do I understand the Government has an objection?

"Mr. Maloney: Oh, yes.

"The Court: The Court is asking you to indicate the purpose at the bench, please.

"Mr. Morosini: Well, I frankly take exception to this practice. I would like to offer my proof.

"Mr. Hickey: I would like to know the purpose of this offer, what do you intend to prove by it?

"Mr. Morosini: I would like to know the objection to it, first.

"Mr. Hickey: I would like to know what you are going to offer so I can object to it.

"Mr. Morosini: The witness has identified them.

"The Court: What is it, Mr. Morosini?

"Mr. Morosini: Well, if your Honor please, may I take exception to this practice. I am brought up here and I am asked, without knowing the basis or what conceivable ground the objection is made on, I am up here to tell my proof.

"(Side-bar conference was had as follows):

"The Court: The Court wants to know.

"Mr. Morosini: I have no hesitation in telling the Court. It is a chart, a compilation of all speeches, reprints of all speeches ordered by Senators and Congressmen from the Government Printing Office.

1375 "We had requested it for several years. Apparently there is a tremendous amount of work involved. These records relate only to a few months. They

show exactly the same information which was shown by an exhibit brought here by the Government.

"The Court: But this does not limit it to the speeches that have been brought into issue here?

"Mr. Morosini: Well, I do not know. I do not know how to answer that. The Government introduced an exhibit here, a similar chart showing all speeches delivered to Congressman Fish's office. I mean, many of those were ordered by Congressman Fish, sent out under Congressman Fish's frank, and so on, and so forth.

"Now, what connection did we have with that? On the same basis I think we are entitled to show here that ordering reprints is a customary thing, and to show the number that is ordered.

"Mr. Hickey: Of course, we object to it on the ground that what others were doing in totally irrelevant and immaterial to the issues in this case, and, of course, the speeches which were offered and ordered by George Hill were material to the issues in this case, and I think we have shown that.

"The Court: The Court thinks the objection is good.

"Mr. Morosini: If they can bring in their records, why can't we?

1376 "The Court: I do not see that it relates to the issues of this case.

"Mr. Morosini: I frankly do not see where the other record related to the issues of this case. They brought in records of all reprints of speeches delivered to Congressman Fish's office. Why can't we bring in speeches, records of speeches delivered to Senator Barkley's office or to other Senators' offices? I do not understand it.

"The Court: You can indicate what speech you are interested in.

"Mr. Morisini: I am interested in all of them, frankly. I will show here that all kinds of speeches, reprints have been made. I will show it is nothing unusual for instance, to have a reprint of a speech made by Congressman "A", delivered to Congressman "C's" office, and sent out from Congressman "C's" office. There has been an inference shown here.

"Mr. Hickey: Your Honor, we showed all the speeches ordered by George Hill were paid for—by the testimony of Hill—with cash given him by Prescott Dennett, and we also showed the defendant's connections with Dennett and we limited the evidence to that purpose. We fail to see how what other Congressmen and Senators were doing, has any more relevancy to the issues in this case than
1377 what other registrants were doing. And, on the basis of your ruling on that, we ask that the same ruling apply.

"Mr. Morosini: That is not entirely accurate, and I will get your own exhibit which shows where you have gotten records of speeches ordered and delivered to Congressman Fish's office, to which there has been no testimony whatsoever linking these speeches to Dennett, Hill or anybody else.

"What is the purpose of the speeches in evidence?

"The Court: The Court thinks this objection is good.

"Mr. Morosini: I would like to know why, if the Court please, frankly. I mean, I am confused here.

"The Court: It does not relate to the issues of the case.

"Mr. Morosini: Do reprints of speeches delivered to Congressman Fish's office, sent out by Congressman Fish under his own frank, have any relation to this case?

"The Court: Well, I do not know what ones you are talking about.

"Mr. Morosini: I will be very glad to indicate them.

"The Court: But those that were received did relate to the issues of the case.

"Mr. Morosini: I will be very glad to indicate the ones I have reference to, if the Court please. I have a
1378 photostatic copy of the chart which is in evidence.

"Mr. Hickey: If your Honor will let me clear that up, Mr. Morosini is confused.

"Mr. Morosini: I am not confused in any way.

"Mr. Hickey: They were on the chart because the records indicate all the speeches charged from Congressman Fish's office. However, Mr. Maloney, in questioning Mr. Hill from the chart, and in offering testimony from the chart, limited his examination of that chart to speeches ordered and paid for by George Hill.

"The record will absolutely bear me out on that. There was not a question asked and there was not a reference made to speeches ordered by anyone but George Hill.

"Mr. Morosini: That may be true, but those others are in evidence, and that is all I am asking to do now, is to put these records in evidence.

"The Court: I cannot encumber the record in that way. The objection will be sustained.

"Mr. Morosini: I do not understand, I am terribly confused. They are permitted to do one thing and we try to do the same thing and we cannot do it. I do not understand it, I honestly do not.

"(Counsel return to counsel table.)

"Mr. Morosini: May I have an exception?

"The Court: Yes.

1379 "Mr. Morosini: I am sorry, Miss Loeffler, I am afraid we cannot proceed any further.

"Mr. Maloney: No questions, Miss Loeffler."

* * * * *

Senator Joseph F. Guffey appeared in response to a subpoena with certain records, and after having been sworn, the following proceedings were had:

1275 "Q. Senator, do you know a gentleman called William C. Bullitt? A. I do.

"Q. In August, 1940, what was his position if you know? A. Ambassador to France.

"Q. Do you recall a speech by Ambassador Bullitt delivered on or about August 18th, 1940? A. I do.

"Q. Do you know where that speech was delivered? A. At Independence Square, Philadelphia. I heard it over the radio.

"Q. You heard the speech? A. Yes.

"Q. Was this speech printed in the Congressional Record, if you know? A. It was.

"Q. By whom was it introduced in the Record?

"Mr. Maloney: Now, just a moment, Senator. May we at this time again approach the bench on an offer of proof?

1276 "Mr. Morosini: No, if the Court please, I object to this. I think we are entitled to propound questions to the witness and bring out our testimony.

"Mr. Maloney: The Court has already sustained an objection to a similar inquiry.

"Mr. Morosini: No, the Court has not.

"The Court: The Court thinks it is better to know the purport of the evidence. I will ask you to come to the bench.

"(Counsel confer with the Court at the bench, without the hearing of the jury, and the following proceedings were had):

"Mr. Morosini: I object most strenuously to this procedure. Every time we put a witness on we come up here and make an offer of proof.

"Mr. Maloney: Perfectly proper.

"Mr. Morosini: Why can't we propound our questions? If there is anything objectionable to the questions asked, why doesn't counsel make his objection.

"The Court: I think it is better to show.

"Mr. Morosini: In other words, we have to divulge all of our proof before we can even try to get it in?

"Mr. Maloney: That is not so at all, Mr. Morosini, you know better than that. It is proper procedure.

"The Court: You may proceed.

1277 "Mr. Cohalan: We offer to prove through the testimony of this witness that a speech made by Ambassador Bullitt in or about the month of August, 1940, was put into the Congressional Record by Senator Guffey of Pennsylvania, and that Senator Guffey thereafter ordered 1,000,000 reprints of this speech, that Senator Guffey ordered these reprints on behalf of Mr. Bullitt and a Committee called 'The Council of Democracy,' having its headquarters in the State of New York; that Senator Guffey arranged for the payment to the United States Printing Office for these speeches by the said Council of Democracy in New York; that upon receipt of the 1,000,000 copies of this speech, Senator Guffey caused 16,000 of them to be sent out under his frank through his own office, on his own mailing list, and that the other 984,000 copies of the speech were distributed through the country in the following manner: that they were turned over to the Post Office Department in particular places where there were rural box holders and through the assistance of the Post Office Department, and without the necessity of addressing any of the speeches at all, these speeches were delivered through the mail to each and every holder of a rural box delivery.

"We offer this testimony, your Honor, for the purpose of showing, Number 1, that the practice of putting articles

or speeches in the Congressional Record, or ordering reprints of those articles and sending these matters
1278 broadcast through the nation was not an uncommon practice on Capitol Hill.

"Mr. Maloney: Nobody has ever said it was.

"Mr. Cohalan: Well, wait a minute.

"The Court: Wait just a moment.

"Mr. Morosini: We simply want to show it was.

"Mr. Cohalan: We offer it for the secondary purpose of showing that this practice was used by each and every side of every discussion, or every, you might say, fight that has gone on in the Congress of the United States. We offer it to meet testimony adduced by the prosecution here, having to do with the sending out of speeches which were also put in the Congressional Record and sent out by these organizations, and we believe it is competent.

"Mr. Hickey: We object to it as being wholly incompetent, irrelevant and immaterial to the issues in this case. What others were doing is no concern in the case, any more than the registration statement of other registrants.

"Mr. Cohalan: I do not believe that that is sound, your Honor, for this reason—the activity that the prosecution sought to bring proof of in this case here had to do with the putting of speeches and articles in the Congressional Record, and the sending of them out to various mailing lists, everything else like that, and no proof was
1279 adduced before this jury that that was a practice which was commonly indulged in by those men on the hill. We believe this testimony is necessary from the standpoint of our defense in order to show there was nothing unusual about this, and it was common practice.

"Mr. Maloney: It is perfectly irrelevant and immaterial. It can have no probative value. What one patriotic American Society may have done is no defense. We

have shown here this was done by the German Government There is no suggestion that Senator Guffey was in the employ of any Government.

"Mr. Morosini: It is our contention that if this defendant had anything to do with it, he did it in his own individual capacity as an American citizen.

"Mr. Maloney: We still object to it.

"Mr. Hickey: He still had to disclose it under the rules of the State Department.

"Mr. Morosini: He did not.

"Mr. Hickey: Read the regulations.

"Mr. Morosini: I have read them.

"The Court: As I understand the offer, you do not propose to show in any way that this defendant had anything to do with that?

"Mr. Morosini: Not a thing.

1280 "The Court: I must sustain the objection.

"Mr Morosini: May we have an exception?

"Mr. Cohalan: Over our statement that it is just to meet that testimony introduced on the part of the prosecution to the effect that speeches sent out by the Congressional Record in some instances were surreptitious meddling around with the records of Congress, and so forth?

"Why, your Honor, this jury has squarely before it the thought or the inference from the testimony adduced on the part of the prosecution that there is something shady and surreptitious and underhanded about the fact of introducing into the Congressional Record an article or a speech. We have proof of the fact that it is a common thing, and do you not believe that from the standpoint of meeting that issue in the minds of the jury, it is proper to show that there was nothing, and there is not anything in its nature surreptitious about this? This is a common, ordinary method used.

"The Court: I do not think we are concerned with any speeches except those with which the defendant had something to do.

"Mr. Cohalan: I agree with you. I have no interest in the speech. It could be a cure for elephantitis, what I am interested in is getting before the jury the fact that from a proper representative of the Congress or the Sen-
1281 ate, anything from infantile paralysis on up can be put into the Record and sent out.

"Mr. Morosini: They were permitted to offer proof of other speeches sent out, reprints out under the frank, and they did not tie this defendant up to them at all. They brought in a whole cart full of stuff; they had a whole ton of stuff in here from the Government printing office.

"I think we are entitled to show how the process is up there. How is this jury going to get any idea of what it amounts to, otherwise?

"The Court: I cannot see the relevancy. The objection will be sustained. You may have an exception.

"Mr. Cohalan: You will grant us an exception?

"The Court: Yes."

XII.

Refusal of Trial Court to Permit in Evidence a Copy of a Report Made by the Dies Committee of the House of Representatives.

881 The Government witness **Spielman** had testified that she was a member of the American Youth Congress at or about the time she was employed in Senator Lundeen's office and that it was not affiliated with the Communistic Party. While she was under cross-examination there was offered in evidence a copy of a report filed by the

Special Committee on Un-American Activities, otherwise known as the Dies Committee containing a statement to the effect that the American Youth Congress was under the control of the Communists. Thereupon the following took place:

898 "Mr. Morosini: At this time, if the Court please, I would like to offer in evidence a report of the Special Committee on un-American activities, bearing the date January, 1939, I guess it is. Will you mark it for identification.

(Document is marked Defendant's Exhibit 14 for Identification.)

"Mr. Hickey: Are you offering that in evidence?

"Mr. Morosini: I am offering this portion of the report here.

"Mr. Hickey: May I see it?

"Mr. Morosini: Yes, certainly. (Handing document to counsel.)

"Mr. Hickey: Your Honor, I must object to this as absolutely immaterial and irrelevant to the issues in this case.

"Mr. Morosini: Now, if the Court please—

"Mr. Hickey: Furthermore, it is hearsay.

"Mr. Morosini: It is a report of the Congressional Committee, and I think it is very pertinent.

"Mr. Hickey: It is clearly hearsay, your Honor. We have no opportunity to cross-examine as to the accuracy of these findings. It is not binding on the Government in any way.

899 "Mr. Morosini: I offer it, if the Court please, in view of the witness's testimony and for the purpose of impeaching—

"Mr. Hickey: Well, on that point, I submit that there has been no showing whatever that this witness has any knowledge of these findings.

"The Court: The objection is sustained.

"Mr. Morosini: May I state to your Honor that the witness has testified to her membership in this American Youth Congress, and she came out here as a delegate to a convention.

"Mr. Hickey: When she was in college.

"Mr. Morosini: The paper offered is a report of the House of Representatives, it is a public document, and I submit it in connection with that line of testimony from the witness.

"The Court: Her testimony was that the organization was not Communistic, and I notice that this seems to agree with her in that regard, rather than contradict her.

"Mr. Morosini: If that is correct, then let us have the testimony of the Dies Committee, for what it is worth.

"Mr. Hickey: I think it is still immaterial, your Honor.

"The Court: The objection will be sustained.

900 "Mr. Morosini: Now, if the Court please, in view of your Honor's comment that it seems to agree with the witness, instead of contradicting her, I think we should have the report before the jury.

"Mr. Hickey: It is still immaterial.

"The Court: It is immaterial, and it does not go to the impeachment, as far as I can see. Furthermore, I doubt whether it could be said to be competent.

"Mr. Morosini: It is an official report of the investigating Committee of the House of Representatives, which is a public document; it is a public record. It states the results of the findings of their investigation into the American Youth Congress.

900 "The Court: Objection is sustained.

"The Morosini: May I have an exception?

"The Court: Yes."

There was a proffer of proof of the Dies Committee report as follows:

952 "Mr. Morosini: I offer as proof, I offer by way of an exhibit in evidence, Defendant's Exhibit 14 for identification, described as a report of the Special Committee on un-American Activities. Pursuant to House Resolution 282 of the 75th Congress. May if, for the purposes of the offer, and in support of the offer, read into the record the matter which I now offer?

"The Court: Yes.

"Mr. Morosini: Or perhaps it would be just as well if I indicated to the reporter the portions which I should like in the record for that purpose and have them copy it in.

"The Court: That will be satisfactory.

(The following is indicated to be copied into the record):

"'The American Youth Congress was not originally set up by Communists, but it was penetrated by them, as shown by the reports of its first Congress, which was held in Washington, D. C. In 1934, at its second convention, it was broken up and reorganized into a "red" front. (See pp. 611 and 612, vol. 1, committee hearings):

'We defeated the enemy and turned the Youth Congress into a broad united front.

953 'While there are many non-Communist organizations in the Youth Congress, there are over a dozen Communist, Communist front, and Communist sympathizing movements in it. (See p. 613, vol. 1, committee hearings.) The Communists, realizing the value of such an excellent camouflage, immediately set about organizing similar congresses in other countries, and they called for a Paris International Congress. (See p. 613, vol. 1, committee

953 hearings.) Later a World Youth Congress came into being. This embraced the same organizations which were affiliated with the American Youth Congress. (See pp. 615 and 616, vol. 1, committee hearings.) Right-wing

youth movements refused to attend the World Youth Congress which was held at Vassar. The organizers in the United States were leaders of Communist, Communist "front", and Communist sympathizing movements. (See pp. 615 and 616 and 617, vol. 1, committee hearings.)' "

"Mr. Morosini: I offer it as being pertinent in connection with the cross examination of the witness Spielman, she having testified that she was a member of the American Youth Congress, and it appearing from this report that the American Youth Congress was comprised, at least in part, of communistic organizations.

"The Court: I think you had better read that por-
954 tion of the report.

"Mr. Morosini: It says: 'The American Youth Congress was not originally set up by Communists, but it was penetrated by them, as shown by the reports of its first Congress, which was held in Washington, D. C. In 1934, at its second convention, it was broken up and reorganized into a "red" front.' And then they quote a portion from the hearings of their conference or congress or convention, where it says: 'We defeated the enemy and turned the Youth Congress into a broad united front.'

"The Court: That was not the finding of the committee? That was the testimony of some witness, that particular portion?

"Mr. Morosini: That particular portion which I quoted was taken from the committee hearings, but nevertheless, the finding of the committee precedes that portion of the quotation, and then there follows the rest of the language tying the American Youth Congress up with the Communist Party.

"The Court: That also was the testimony of a witness?

"Mr. Morosini: No, if the Court please. The wit-
954 ness testified that the American Youth Congress was not in any way tied up or affiliated with the Communist Party.

"Mr. Hickey: In her opinion. You asked her opinion.

"Mr. Maloney: I think the whole thing is incom-
955 petent, immaterial and irrelevant.

"The Court: I think your identification of the material is sufficient, and the record now discloses your offer. The Court thinks that the only matter that you inquired about was whether or not it was a Communistic organization and she said it was not. These other matters that are mentioned in this report were not brought to her attention, and even if those were offered for the purpose of impeachment, it could not be used for that purpose unless the particular matters which are related there were brought to her attention and she was given an opportunity to testify about them.

"Mr. Morosini: The only way in which I can bring this matter to her attention is by placing the report in evidence. She says she is not familiar with the report. The report is a public document.

"The Court: Your offer of the report is as impeachment?

"Mr. Morosini: Yes.

"The Court: In order to impeach the witness, you must first bring to his attention the things that you claim you say will impeach the testimony, and as far as I can see the only thing that you asked her is whether or not this American Youth Congress was a communistic organization and she said it was not.

956 "Mr. Morosini: Well, I submit to your Honor that that is sufficient basis or sufficient foundation for introducing this report for the purpose of impeachment.

'The Court: This report shows that it was not so organized, and apparently the committee goes on to say that certain influences entered it which in a way changed

its complexion, but the substance of your inquiry was as to the organization.

"Mr. Morosini: No, No, if the Court please. I am only interested in the nature of this organization in 1939
956 when she was a member of it and a delegate to its Congress. That is the only time I am interested in it.

"The Court: This report also shows that there were two Congresses held, and apparently it was only at the latter conference where the red influence seemed to penetrate.

"Mr. Cohalan: But the first one, your Honor, was in 1934, so it obviously must have been the second one and the one that she was a delegate to.

"The Court: And the Court thinks that you do not lay the facts that you rely upon before her in an explicit manner to bring to her attention things that you expected to use in order to impeach her.

"Mr. Morosini: May I say this, that when you come to a question of this type, you are getting very close to the field of contraversial nature. It is one of those things
957 that cannot be reduced to a mathematical certainty.

"The Court: This is only an opinion.

"Mr. Morosini: Certainly.

"The Court: In order to impeach her, it would be necessary for you to bring someone that knows the organization, and not the view as to that organization as gathered by a committee.

"Mr. Morosini: I assume that the Dies Committee publishes its findings after an investigation, and that the conclusions set forth in its report are the findings based upon their own investigation.

"The Court: It is true that that would have a binding effect if they were inquiring into the action of this committee, but that is only their finding upon evidence, and that evidence could be brought here as well as before that

committee, and this jury could say what the effect of the evidence was.

"Mr. Morosini: May I say this, then, that as the record stands up to this point in connection with this particular item, your Honor has indicated to the jury that this report is consistent with the testimony. I wonder if
957 your Honor would correct that impression? It is not entirely so.

"The Court: Yes, if you had come to the bench at that time and requested it, I would have so instructed them.

958 "Mr. Morosini: I asked your Honor that that time—

"The Court: (Interrupting) I am quite willing to tell them that anything that was said between the Court and counsel with respect to the offer of the report of the Dies Committee should not be regarded by them.

"Mr. Morosini: May I have an exception?

"The Court: Not as to that?

"Mr. Morosini: No, not as to that, but as to the general proposition.

"The Court: Let me say to the jury that a short time ago there was offered by the defense a portion of a report of a Special Committee on Un-American Activities. That offer, gentlemen of the jury, was rejected by the Court.

"At the time it was under consideration, the Court made some expression with respect to the effect of this offer, to which the jury should give no weight whatever, because the report has not been placed before you."

XIII.

Cross Examination of the Government Witness Gardner.

The witness **Nadya Gardner** was produced by the
1048 Government who testified on direct examination that she was employed in the office of the British Imperial

Censorship in Bermuda; that she had been so employed since October 1940, in the censorship of some mail going to and from the United States to foreign countries on airplanes or ships which landed in Bermuda; and that while so employed she opened a certain envelope mailed July 1, 1941 in New York, N. Y., to Senhor Royningero Hue-
1050 neros in Lisbon, Spain, this being "an alias used by the German Embassy at Lisbon", and that inside said envelope was a smaller one addressed to Dr. Hans Dieckhoff, Berlin, Germany, which contained some
1044 papers. These papers consisted of numerous extracts
1046 from the Congressional Record which were speeches or parts of speeches made by Senator Rush Holt, and the manuscript was identified by other witnesses as the so-called Holt book.

This witness also testified that she had seen a signature or signatures consisting of the word Sylvester with a square following it and the initials G. S. with a square following it.

All of the testimony was objected to as being incompetent, immaterial and irrelevant. The objections were overruled and exceptions noted.

Upon cross-examination of this witness, the following occurred:

1056 "By Mr. Morosini:

"Q. Mrs. Gardner, in July, 1941, Great Britain was at war with Germany, is that true? A. Yes.

"Q. And you were employed by the British Government in Bermuda? A. Yes.

"Q. And your job was to censor all mail going through Bermuda, is that correct? A. Not all mail, only such as came to me.

"Q. But it was the job of the Censor's Office in Bermuda to censor all mail going through Bermuda, is that correct? A. I am not at liberty to reply to that question.

"Mr. Morosini: I ask the Court to instruct the witness to reply to that question.

"The Witness: I wouldn't allowed to reply, under Government policy.

"Mr. Morosini: This witness cannot take the witness stand here and say she can reply to some questions and cannot reply to others.

"The Court: What was your inquiry? Let us have that.

"(The question was read by the reporter.)

"The Court: I think I will sustain the objection.
1057 You may ask her about her activities, but not her conception of the general policy.

"Mr. Morosini: May I have an exception?

"The Court: Yes.

"By Mr. Morosini:

"Q. You were employed in an office in Bermuda, is that correct? A. Yes, sir.

"Q. You were on a staff, is that correct? A. On the staff, did you say?

"Q. You were a member of a staff, is that correct? A. Yes.

"Q. How large was this staff? A. I am afraid—

"Mr. Maloney: Now, may it please the Court, I think I will have to take an objection at this time as immaterial, has no bearing upon this witness's credibility whatever, and, furthermore, is of such a nature as might be valuable to an enemy of our country at this time, and I must ask this Court to bear with me in directing that this witness not be permitted to disclose official secrets.

"Mr. Morosini: I am not asking this witness, or any other witness, to disclose any official secrets, but they have brought the witness here to testify to events in July, 1941,
1058 at which time this country was at peace. They cannot bring a witness in here to give some testimony, the testimony they want, and then let the witness refuse

to answer all the rest of the facts, giving us a complete story.

"The Court: The Court thinks the objection is good and will sustain it.

"Mr. Morosini: May I have an exception?

"The Court: Yes.

"Mr. Morosini: I submit to your Honor that under the circumstances it would be impossible for me to cross-examine this witness.

"I ask that all of her testimony be stricken out from the record and the jury be instructed to disregard it.

"The Court: The motion is overruled.

"Mr. Morosini: May I have an exception?

"The Court: Yes."

* * * * * *

1064 "Mr. Morosini: I move to strike out of this testimony of this witness, and I ask that the jury be instructed to disregard it, on the ground that it has not been tied up with this defendant; on the ground that it is entirely irrelevant and immaterial in so far as the indictment in this case is concerned, and on the further ground that it is highly prejudicial in so far as this defendant is concerned, and on the further ground that I have not been permitted full cross-examination of this witness.

"The Court: You may proceed with your cross-examination.

"Mr. Morosini: I would like your Honor to rule on my motion.

"The Court: Well, I am first offering you an opportunity to extend your cross-examination, if you wish to do so.

"Mr. Morosini: Will your Honor permit the question asked this witness, to which an objection was made, when I tried to cross-examine the witness before?

1065 "The Court: No.

"Mr. Morosini: Your Honor will not?

"The Court: No. Not if it is the same question. I would necessarily rule as I did before.

"Mr. Morosini: Those are the questions to which I am referring.

"The Court: The motion is overruled.

"Mr. Morosini: May I have an exception?

"The Court: Yes. Any other questions?

"Mr. Maloney: None from the Government, sir.

"Mr. Morosini: I have no further questions.

"The Court: As to this record, this evidence has been received to identify a certain exhibit that has been marked for identification.

"Mr. Maloney: That is right, sir.

"The Court: Those exhibits have not been received in evidence. Mr. Maloney has assured the Court that their relevancy will be connected up.

"Mr. Maloney: That is right, sir."

XIV.

Motion for Instructed Verdict for Appellant.

1395 "Counsel for the defendant Viereck at the close of the evidence in this case moves this Honorable Court to instruct the jury to render a verdict for the defendant on all three of the remaining counts in the indictment and as grounds for this motion say:

"1. That the Government has failed to prove the defendant guilty beyond a reasonable doubt.

"2. That the Government has failed to prove the defendant Viereck willfully failed to file any statement required to be filed under the Act of June 8, 1938, as amended by the Act of August 7, 1939.

1396 "3. That the Government has failed to prove that the defendant Viereck in complying with the provisions of the Act of June 8, 1938, as amended by the Act of August 7, 1939, made a false statement of a material fact.

"4. That the Government has failed to prove that the defendant Viereck willfully omitted to state any material fact required to be stated in complying with the provisions of the Act of June 8, 1938, as amended by the Act of August 7, 1939.

"5. That the Government has failed to prove that the defendant failed to comply with the Act of June 8, 1939, as amended by the Act of August 7, 1939, by his statement in answer to requirement No. 11 of the Supplemental Registration forms under said Act as amended.

"'6. That the defendant's statement in response to requirement No. 11 of the Supplemental Registration Statement of the defendant under the Act of June 8, 1938, as amended by the Act of August 7, 1939, 'Author and Journalist,' complied with the requirements of said Act as amended and the statement required to be made by the defendant thereunder.

"7. That the defendant's statement 'Author and Journalist' contained in the statement made by him in complying with the Act of June 8, 1938, as amended by the Act of August 7, 1939, was a comprehensive statement of
1397 the nature of the business of the registrant.

"The Court: Will you state that one again, please.

"Mr. Cohalan: Yes, sir. That the defendant's statement, 'Author and Journalist' contained in the statements made by him in complying with the Act of June 8, 1938, as amended by the Act of August 7, 1939, was a comprehensive statement of the nature of the business of the registrant.

"8. That the Government has failed to prove beyond a reasonable doubt that the defendant Viereck was in the employ of the German Government or of any foreign principal or principals in doing research work for any member of the Congress or in preparing or in assisting in preparing any addresses and papers for any such member of Congress, or that the defendant Viereck received from the German Government or from any foreign principal or principals whatsoever, any sum of money or other thing of value for such services, or that he paid to any member of Congress any sum of money or gave any such member of Congress anything of value in this connection.

"9. That the Government has failed to prove beyond a reasonable doubt that the defendant Viereck was acting in other than his individual capacity in arranging for the mailing of any speech of any member of the Congress reprinted from the Congressional Record; that is, that the
1398 defendant Viereck acted other than in his individual capacity as an American citizen, and entirely in accordance with all laws of the United States.

"10. That on the contrary, the Government's own evidence, the contracts of employment by foreign principals which were filed by the defendant Viereck with the State Department as a part of his registration statements, show that Viereck was not required by his contracts of employment by the foreign principals to perform any of the acts complained of in the indictment as the agent of any foreign principal."

1398 to 1408 The motion was argued by counsel for the appellant, whereupon the Court ruled:

1408 "The Court: I have given consideration, I think, to every proposition mentioned, and have concluded that it is a case for the determination of the jury. So, your motions and each of them will be overruled and you may have an exception."

XV.

Motions to Dismiss the Indictment.

Before the jury was selected, counsel for appellant submitted the following:

14 "The Court: Did you have something else?

"Mr. Morosini: Yes, if your Honor please. I would also like at this time to make a motion to dismiss the indictment, and I think I would like to make that while the jury is absent. I move at this time to dismiss the indictment on the ground that the indictment fails to state facts sufficient to constitute a crime against the United States. The indictment charges the defendant with a violation of the Act of June 8, 1938, as amended. This Act requires that certain persons in the employ of defined foreign principals register with the State Department. The act provides the information—

"Mr. Maloney: Mr. Morosini, may I interrupt for a moment?

"Mr. Morosini: Yes.

15 "Mr. Maloney: May I call the attention of the Court to the fact that a demurrer was filed and argued in this case some time last fall, and it seems to me this present motion is in the nature of another demurrer.

"Mr. Morosini: This is a motion to dismiss the indictment, if the Court please, in other words, that the indictment fails to state facts sufficient to constitute a crime against the United States.

"Mr. Maloney: A rose by any other name; your Honor, it is still a demurrer in effect, and we have had no notice of this motion being brought on at this time.

"The Court: I think I should hear him.

"Mr. Morosini: The statute, in so far as registration is concerned, requires two things; it requires an original

registration by the person acting on behalf of a foreign principal for whom—and for the purposes of discussion and brevity we shall call the Agent—it also requires
15 a supplemental statement to be filed every six months by that registrant giving certain stated information on forms provided by the Secretary of State for both purposes.

"The crime charged in the indictment, incidentally there have been five counts in the indictment and the counts relating to original registration having been stricken on demurrer, the remaining counts relate only to the sup-
16 plemental registration statements filed by this defendant. It appears that the defendant registered as an agent for certain foreign principals domiciled abroad. It appears from the indictment that on the forms provided by the Secretary of State for such registration a question which reads, 'Give a comprehensive statement of the nature of business of registrant.' It is charged in this indictment that this defendant violated that regulation in that he failed to include in answer to that statement certain facts alleged and set forth in the indictment, which facts are also characterized as material facts.

17 "Now, then, we claim that even assuming all that to be true, this indictment still fails to set forth the facts sufficient to constitute a crime against the United States.

"This indictment charges as the basis for the crime contained therein a violation of the regulations promulgated by the Secretary of State pursuant to the statute in question.

"In the first place, a violation of a rule or regulation cannot constitute a penal offense unless such violation is expressly made a penal offense by an Act of Congress. In other words, at no place in this Registration Act does it provide that any violation of any rule or regulation

promulgated by the Secretary of State shall be a penal offense.

"It is true that the Secretary is authorized and directed to prescribe such rules and regulations and forms as may be necessary, in purely an administrative fashion, to carry out the purposes of the Act, but the point which I want to emphasize is that nowhere in this Statute is a violation of any of those rules or regulations made a penal offense.

"This indictment is founded entirely and com-
17 pletely upon an alleged violation of this particular regulation.

"Now, the cases on the question are many and
18 they are very clear and there is very, very little doubt about it. I would like to refer to a few of them.

"The case of U. S. vs. George, 228 U. S. 14. In that case a demurrer was involved, a demurrer to the indictment. The indictment charged the violation of a regulation and the demurrer was sustained. In that situation too, the regulation was promulgated by the department, pursuant to the provisions of a certain statute which statute did not make the violation of any regulation a crime.

"The Court, in discussing the case and in discussing the situation in its opinion said, 'Under the guise of regulation, legislation cannot be exercised.'

"And further: 'The charge is as of crime, and it must have clear legislative basis.'

"Again, in the case of United States vs. Eaton, 144, U. S. 677, the Court said:

'It is necessary that a sufficient statutory authority should exist for the declaring any act or omission a criminal offense. * * * Regulations prescribed by the President

and by the heads of departments, under authority granted by Congress, may be regulations prescribed by law, so as to lawfully support acts done under them, and may thus have, in a proper sense, the force of law; but it does not follow that a thing so required by them is a thing
19 so required by law as to make the neglect to do the thing a criminal offense in a citizen, where a statute does not distinctly make the neglect in question a criminal offense.'

"Again, in the case of United States vs. Grimaud, 220 U. S. 506.

"There is no doubt but that Congress in exercising its legislative function has the power to include, when it promulgates a statute or enacts a statute, it has the right to include as a provision to that statute, a provision empowering the head of an Administrative Branch of the Government to promulgate certain rules and regulations to carry out and give effect to the Statute, and also to make the violation of any of those rules and regulations a penal offense under the statute. There is no ques-
19 tion about the right of Congress to do that. We say merely that where Congress has failed to do that, and an indictment is found because of an alleged violation of any such rule or regulation, that such an indictment is invalid.

"I would like to read only a few more of the cases.

"Referring to the case of United States against 11,150 lbs. of butter, 195 Fed., 657, where the Court said:
20 'Doubtless Congress might have enacted that the violation of certain rules and regulations of the Secretary, not inconsistent with law, which it authorized him to make, should subject property to forfeiture and persons to fines and imprisonment. But it has failed to declare that the violation of this regulation or of any regu-

lation of its nature, should have that effect. An offense which may be the subject of criminal procedure must be an act committed or omitted 'in violation of public law, either forbidding or commanding it.' 4 Blackstone's Comm. 5. A penal statute which creates and denounces a new offense * * * may not lawfully be extended by either executive or judicial construction to classes beyond its terms. Men must not be punished unless they fall clearly within the class of persons specified as punishable by such a law.

"The definition of offenses, the classification of offenders, and the prescription of the punishment they shall suffer are legislative, and neither executive nor judicial functions. Any forfeitures, fines and penalties inflicted may not be prescribed, imposed or inflicted for violations of a regulation of an executive department without previous legislative prescription.'

"In United States v. Sandefuhr, 143, Fed. 49, the Court said:

21 'The indictment fails to charge any violation of a statute enacted by Congress or regulation of the head of a department the violation of which is made punishable by any act of Congress, the demurrer must be sustained.'

"Again, United States vs. Dodson, 268 Fed. 397:

'No statute, however, makes a violation of any such regulation a punishable crime, and therefore the defendant may not be penalized in this proceeding, even if it be shown that he committed such violation.'

21 "A case in this District, in the District of Columbia, United States vs. Louisville & Nashville Railroad Company, 166 Federal, 942:

'The crime must be created by the Act of Congress alone, for the public are not required to look beyond the

Act in their endeavor to ascertain what is criminal, and the discretion of fixing what facts import criminality is exclusively that of the lawmaker as distinguished from the executive. The effect of departmental regulations, not ratified by Act of Congress, is confined to civil matters, and cannot be made the predicate of criminal offenses.'

"Lastly, United States vs. The Standard Brewery, 251 U. S. 210, where the Court said:

'Administrative rulings cannot add to the terms of an Act of Congress and make conduct criminal which such laws leave untouched.'

22 "The only crime alleged in the three counts, the three remaining counts of the indictment, is an alleged violation this particular legislation promulgated by the Secretary of State pursuant to this statute.

"This regulation is contained in the form of the supplemental registration statement to be filed by registrants for the six months intervals following the original registration.

"This regulation, this question contained on that form, which is apparently one which has undoubtedly the force and effect of a regulation, requires of a registration, 'Give a comprehensive statement of the nature of your business!'

"The sole basis of the crime charged in the indictment is a violation of that particular regulation, and the basis of the law cited to your Honor, which holds, and holds without any doubt—without any shadow of a doubt at all—that the violation of a regulation cannot constitute a crime unless the statute itself expressly makes the violation of such a regulation a penal offense. This statute does not make the violation of any regulations promulgated by the Secretary of State a penal offense, therefore this indictment is void, it is void in that it fails to state facts sufficient

to constitute a crime against the United States.

23 "In passing, I want to merely point out a few
23 more points in connection with this action.

"Under no theory or under no construction of the Act could this indictment be justified. The regulation itself, even from an administrative point of view, goes far beyond the purposes of the statute itself. It is an unreasonable regulation, even for purposes of carrying out the administration of this Act, in that it enlarges upon the statute. The statute itself is quite explicit in its terms as to the information to be required by the registrant, by the person registering or being compelled or required to register by reason of his employment by a foreign principal.

"This regulation, which adds additional information, which adds an additional requirement, a requirement not contemplated by the statute, goes far beyond the terms of the statute, and in any event is void.

"I am not going to take the trouble to read any citations in support of that. I think the law on the question is quite clear, namely that any regulation which enlarges upon the substance of the statute, any regulation which goes beyond the provisions of the statute, is unreasonable, and therefore void.

"Again, and as I said before, under no theory
24 can this indictment be sustained, and under no theory can the regulation, the violation of which is charged in this indictment, be construed as a proper regulation.

"Reading the statute, together with the regulation, one can only come to one conclusion; and that is that the provisions of the regulation in question are so vague, indefinite, uncertain and wanting in the standard of criminality that they violate the fifth and sixth amendments of the Constitution of the United States.

"Perhaps I had better rest a moment for Mr. Maloney to finish his conversation.

"The Court: Yes.

"Mr. Maloney: I was conferring with my colleague, Mr. Hickey.

"The Court: Apparently you were talking a little too loud.

"Mr. Maloney: Apparently Mr. Morosini was trying to eavesdrop and could not keep his attention on what he was saying, too.

"Mr. Morosini: Shall I proceed?

"The Court: You may proceed.

"Mr. Morosini: In the requirement promulgated by the Secretary of State requiring the registrant to answer this question and to give the information required by this regulation, the Secretary of State has not only increased the standard of guilt, but has no changed the standard of guilt as established by the Statute—the Statute creating the penal offense—that that standard of guilt has become so vague, so entirely uncertain and so completely indefinite, that a person placed in the position where he must comply with the provisions of that statute has no means of ascertaining that which he must do, that which he is required to do by that statute in order to comply with it, or that which he need not do; in other words, that regulation destroys completely a clear-cut standard of criminality established by the Act.

"To that extent, the regulation is entirely void.

"The leading case on the question is United States vs. Cohen Grocery Company, 225, United States 81, and I might add that the same language by the Court in that case may be applied directly to the situation in this case.

"The Court said there:

'It (referring to the Section there in question) confines the subject matter of the investigation

which it authorizes to no element essentially inhering in the transaction as to which it provides. It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against.'

"In other words, a prospective registrant reads this statute, he filed this registration statement. Six months later he comes along to file his supplemental registration statement. He again reads this statute, and he sees on this form, 'A comprehensive statement of the nature of your business.' He finds nowhere in this statute anything requiring him to say a word about the nature of his business at all. Therefore, the injection of that requirement of that regulation into the situation leaves him in the position where he has no basis, no means of ascertaining for himself what he must do or what he should do or what he need not do in so far as this statute is concerned.

"In the case of Lanzetta vs. New Jersey, 306 U. S. 451, where I think perhaps the argument is very well summed up, the Court said:

'No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State Commands or forbids. The applicable rule is stated in Connally v. General Construction Co., 269, U. S. 385, 391; 'That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men guess at its meaning and differ as to its application, violates the first essential of due process of law.'

"I do not think it necessary to refer to the other cases; there are many of them. I think I have pointed out to your Honor the pertinent decisions.

"I just want to call to your Honor's attention one further thing in connection with the statute itself. We assumed, and it was so held on the regument of the demurrer, that Section 3 of the statute relates to supplemental registration. Registrant reads that section of the statute and he comes upon, comes down on sub-section C: 'A statement containing such details required under this Act as the Secretary shall fix of the activities of such person as the agent of a foreign principal during such person as the agent of a foreign principal during such six months' period.'

"When he comes to the regulation, to the form
28 of the supplemental registration statement and finds a question which requires him to give a statement, a comprehensive statement of the nature of his business, under no sense can he possibly construe that that regulation was promulgated or seeks to obtain the information which the Secretary of State is empowered to ob-
28 tain under Section 3-C of the Act.

"Furthermore, and in that connection, the original registration required by the registrants contains the same question; that is, 'Give a statement, a comprehensive statement, of your business.'

"Now, that is in connection with the original registration. The registrant has not yet worked or done anything in behalf of his foreign principal except to make a contract, and that is why he is registering.

"Now, what can his answer be to that question in so far as the original registration is concerned? He is going to naturally state his usual occupation. If he is a lawyer, he going to say he is a lawyer; if he is a doctor, he is going

to say he is a doctor; and so forth. He comes now to the supplemental registration form and he finds the same identical question with nothing in the form, nothing in the statute, nothing in the regulations to indicate to him even vaguely that that question in the same identical language in the supplemental registration form, that question in that form in the same identical language as that
29 used on the original registration form—there is nothing anywhere to indicate that that question on the supplemental form requires any information different than that required on the original form, and particularly where the supplemental form itself at the top contains the language that if there has been no change, 'you may use the words "the same"'.

"Now, obviously, what can that regulation or what can that question in the supplemental form require? It is just asking one simple question—'Are you still a lawyer?' 'Are you still a doctor?' 'Are you still pursuing the same normal occupation which you were pursuing when you originally registered?' That is all it can mean to anybody.

"I repeat to your Honor that this indictment fails to state facts sufficient to constitute a crime against the United States, and for the reasons enumerated, and that this indictment against this defendant be dismissed.
29 "The Court: The motion will be overruled, and the defendant may have an exception to the ruling."

* * * * *

The Motion to dismiss the indictment was re-
1105 newed at the close of the Government's evidence in the case. Whereupon the following occurred:

"Mr. Morosini: We want to move to dismiss, and a motion for a directed verdict. They all involve questions of law.

"The Court: You have waived that right by putting in part of your case.

"Mr. Morosini: I do not believe I have. I have tried to save every exception.

"The Court: I mean, you have introduced some of your evidence.

"Mr. Morosini: Only in connection with cross examination of the witness.

"The Court: You have introduced it as your evidence.

"Mr. Morosini: I do not know whose evidence it
1106 is. Obviously it is introduced as my evidence, I suppose, but the purpose was to cross examine the witness. I am entitled to impeach the credibility of a witness, and where it is necessary to introduce documents for that purpose, I am entitled to do that.

"The Court: What was Defendant's Exhibit A?

"Mr. Morosini: What was our first exhibit?

"Mr. Cohalan: I do not know. I will find out.

"Mr. Morosini: I do not think, in any event, if the Court please, that by introducing any documents for the purpose of cross examination I can be deemed to have started on Defendant's case.

"Mr. Maloney: Oh, yes; that is the reason you offered it.

"Mr. Cohalan: The first exhibit was Hauck's statement to the F. B. I.

"The Court: I can remember one instance where Mr. Maloney offered some exhibit. Mr. Maloney suggested that he put it in evidence, and you said you wanted to put it in as your evidence. I have forgotten which one that was.

"Mr. Morosini: He wanted to put a whole lot of mail bags in evidence and, of course, I objected to the mail bags.

"Mr. Maloney: Oh, no.

1106 "The Court: No, something you were offering.

"Mr. Morosini: I do not recall that.

"Mr. Maloney: My recollection agrees with your Honor's recollection.

1107 "Mr. Hickey: I remember that particularly.

"Mr. Morosini: I do not recall that. I certainly have made no attempt throughout the Government's case to prejudice my own case. Anything I did in connection with the Government's case was aimed directly at the credibility of witnesses and impeaching the witnesses.

"The Court: You put in all these speeches and under your Exhibits, and read them to the jury.

"Mr. Morosini: Of course, I put them in.

"The Court: You made them your exhibits.

"Mr. Morosini: Of course I put them in evidence for the sole purpose of impeaching the witness. The purpose for which this testimony was brought forth.

"Mr. Hickey: Your Honor, on that point I raised the issue squarely once by asking Mr. Morosini if he were introducing this as his own exhibit, and you asked him, and he said he was.

"Mr. Morosini: Can I introduce an exhibit for the Government? I do not know how I can introduce an exhibit for the Government.

"The Court: You cannot.

"Mr. Morosini: And if a witness testifies to a certain paper, and it is necessary for purposes of cross ex-

1108 amination, impeaching their testimony, that that paper be used, the only way I can do it is to offer that paper in evidence while the witness is on the stand. I cannot keep all these witnesses here throughout the defendant's case.

"Mr. Maloney: You could have it marked for identification.

"The Court: Well, our rule here is very definite, that if the defendant puts in part of his case he must reserve

his motions until he has completed his evidence in his own case.

"Mr. Morosini: I do not for one moment contend, if the Court please, that I have put in any portion of our case.

"The Court: The Court thinks you have. You had them marked Defendant's Exhibits and you offered them and read them to the jury.

1108 "Mr. Morosini: I submit to your Honor, how can I possibly, as I say, where there is a Government witness on the stand now and it becomes necessary to impeach that witness's testimony, and papers or documents are necessary for that purpose, how else can I do it except by putting them in evidence?

"The Court: I do not know, but you should not have put them in the Government's case.

"Mr. Morosini: In other words, I would have to introduce it as a Government's exhibit. I would only have two alternatives, either introduce it as a Government

1109 exhibit, or ask that that witness be held and then call him as a defense witness, the witness I am seeking to impeach.

"The Court: The Government is not obliged to put in evidence what you think ought to be there. They are not obliged to put in those speeches, for instance. They were not obliged to put them in.

"Mr. Morosini: Of course they were not, but I still say to your Honor now, when it becomes necessary to use papers for the purpose of impeaching testimony of a Government witness, how can those papers be used?

"The Court: They are presented to the jury for the purpose of identification, and then you question appropriately upon the cross examination as to them, but you do not introduce them until you put your own case in.

"Mr. Maloney: That is right.

"Mr. Morosini: How can I get them in evidence, if the Court please, when I am putting my own case in if this witness is not present?

"Mr. Maloney: Having had them identified, you can offer them.

"The Court: You can question as to them when you have them marked for identification.

"Mr. Morosini: I have never heard of it. May you have a peculiarity of practice, but I am frank to say it befuddles me.

"Mr. Maloney: That is the well established practice.

"Mr. Morosini: It is not the well-established practice at all. It is not the practice up my way, and the practice with which I am familiar.

"The Court: That is the practice here.

"Mr. Morosini: I must say in all fairness—

1110 "Mr. Hickey: That is the practice in the Federal Courts.

"Mr. Morosini: It is not the practice in the Federal Courts.

"The Court: You may have an opportunity to make your motions at the conclusion of all the evidence.

"Mr. Morosini: Well, I have to, of course, take exceptions to your Honor's refusal to permit me to both renew my motion to dismiss and move for a directed verdict.

"The Court: Yes, you may have that opportunity at the end of your case.

"Mr. Morosini: I think, in all fairness to the situation, in any event, I should be permitted to argue the questions of law at this time.

"The Court: I think not. I think I will hear them at the end."

* * * * *

The Motion was again renewed as follows:

1395 "Mr. Cohalan: Firstly, your Honor, we renew our motion to dismiss, a motion that was made at the opening of the case to dismiss the indictment on the ground it fails to set forth facts sufficient to constitute a crime against the United States. This motion and all the arguments in support thereof has heretofore been presented to your Honor.

"We renew the motion on the same grounds as stated in the original argument."

1408 The Court denied the Motion.

XVI.

Motion for Change of Venue or for Delay in the Trial of the Case, and Responses of Members of the Jury to Having Read the Newspapers About Appellant.

A formal written motion was filed (ante pp 60-69) for a change of venue or for delay in the trial of the case but the motion was denied. This motion was renewed when the case was called for trial and before the jury was selected whereupon the following took place:

2 "Mr. Morosini: If the Court please, on January 29th a motion was made on behalf of the defendant for a change of venue, or in the alternative, for a postponement of this trial until public sentiment had a chance to subside.

"At the same time we moved and asked that Mr. Maloney, the Special Assistant Attorney General in charge of the trial of this case for the Government, be restrained from holding press conferences.

"I understand that that motion has been denied by your Honor.

"The Court: Yes, I think there should be a formal ruling on it in the presence of the defense, so the Clerk will now make a formal record that the motions are denied.

"Mr. Morosini: May the record also show an exception, if your Honor please?

"The Court: Yes, you may have an exception.

"Mr. Morosini: At this time I want to renew those motions, because of the events which have occurred since the day on which those motions were argued, and specifically, and so that the record will be clear as to my present motion, I will read, or at least hand—I will both read it and hand it to the stenographer so that there will be no mistake—we move that the defendant be granted a change of venue and that the trial of the case be transferred to the United States District Court for the District of Maryland, or to either of the two Districts in Virginia, and that if the foregoing prayer be denied, the trial of this case be postponed until some subsequent term of the court, so that any hostility engendered against the defendant by reason of the facts stated in support of this motion, and particularly by the acts of Mr. Maloney, may have time to disappear; that William Power Maloney and all other agents and officers of the United States be enjoined and restrained from giving interviews, releases, or holding press conferences with representatives of the press concerning this case before, after or during the trial of this case, and in this connection it must be said on behalf of the defendant, that there is no objection to the press reporting the trial as it actually takes place in this court room.

"Now, since the argument of this motion before your Honor and the presentation of factual material in support of it, on January 29th, there have been certain oc-

currences, occurrences which we charge on the part of the press to be an abuse of their privilege of self-expression, on the part of the Attorney General's Office, Mr. Maloney in particular, of a violation of his duty as a prosecuting officer.

"In this connection we have addressed a letter to the Hon. Francis J. Biddle, Attorney General of the United States, Department of Justice, Washington, D. C., a copy of which we have sent to your Honor.

"I would like to read that letter into the record at this time.

"It is dated February 11th, 1942, and it reads:

"Hon. Francis J. Biddle,

"Attorney General of the United States,

"Department of Justice,

"Washington, D. C.

"Dear Sir:

"We are the attorneys of record for George Sylvester Viereck, the defendant in a criminal proceeding pending in the District of Columbia and which has been set down for trial on February 16, 1942, before Mr. Justice Letts. Mr. Viereck was indicted for violation of the Act of June 8, 1939, as amended and is charged with a failure to include certain material facts in supplemental registration statements filed by him in connection with his agency for certain foreign principals.

"On February 6, 1942, a shocking occurrence took place before Mr. Justice Letts when one George Hill was up for sentence after conviction for perjury before a Grand Jury. Mr. William Power Maloney, who had represented the Government in the Hill case and who is also prosecuting Mr. Viereck, addressed the Court on behalf of the Government in connection with the sentence imposed upon Hill. In his argument he made the following statement:

'This man is still shielding Viereck, a sworn enemy of this country.' Such statement was prominently published by every newspaper in the District of Columbia. It was even the basis of an editorial in the Washington Post.

We charge that Mr. Maloney's conduct on this occurrence violated his duty as a prosecuting officer, violated the spirit and letter of our Constitution and violated every known principle of fair play. It is as much the duty of a prosecuting officer as it is that of our courts to preserve for every defendant in a criminal proceeding the fundamental right to a fair trial guaranteed by our Constitution. Mr. Maloney's statement charges Mr. Viereck with treason. It was made without foundation in fact or in law. It was made on the eve of his trial in the District of Columbia and before the same Judge who will try the Viereck case. It was made with the cold purpose of 'damning' utterly any chance our client had of securing a fair trial on the charge of having violated the Registration Act.

"Nor was Mr. Maloney content with this utterance. After the termination of the proceeding before Mr. Justice Letts, Mr. Maloney saw fit to hold a press conference in the hallway of the courthouse. At this conference Mr. Maloney informed the press that Mr. Hill's attorney had made the Government a proposition which the Government could not entertain. This was obviously done for the purpose of strengthening in the minds of the reporters the impression gained from Mr. Maloney's statement in the courtroom, that Mr. Hill is 'shielding' Mr. Viereck in some apparently diabolical plot.

'We have had occasion in the past to complain of the holding of press conferences by Mr. Maloney in connection with this case. In fact we made a motion to enjoin him from further doing so. That motion was un-

fortunately denied. This, however, does not excuse his conduct nor does it give him the right—as he evidently believes—to make any rash, intemperate statement that comes into his head, irrespective of the rights of a defendant.

7 'If the Court in the exercise of its discretion, won't restrain Mr. Maloney from such tactics, we believe that the Attorney General, in his capacity as head of the Department of Justice, should. Accordingly, in the interests of justice and in the interests of seeing to it that the duty and function of public office is properly carried out, we demand that you make a proper investigation of the facts herein set forth and act accordingly.

'This letter is not intended to convey the impression that this defendant is going to permit this incident to pass unprotested. This letter will act as notification to you that at the opening of the trial of this case we intend to renew our motion for postponement of the trial, until such time as public sentiment whipped up by Mr. Maloney's activities has had an opportunity to subside, or in the alternative, for change of venue. We also intend to renew our motion for an order restraining Mr. Maloney from conducting further press conferences in regard to our client, or to the forthcoming trial.

'We are sending a copy of this letter to Mr. Justice Letts.'

"Respectfully yours,

"COHALAN & MOROSINI."

8 "The statement made by Mr. Maloney in connec-
8 tion with the Hill sentence and the charge that Mr. Viereck, the defendant in this case, is a sworn enemy of the United States, appeared in practically every, if not actually every newspaper in the District of Columbia, and in many editions of it. I do not have them all here. I

do have a few of them, however, and I would like to offer as part of this motion an item from the Washington Star of February 6, 1942, where the statement is recounted and where the conference in the hallway is also noted. To the same effect the Washington Post of February 7, 1942, and again an editorial appearing in the Washington Post of February 7, 1942, where this statement, this charge, this unfounded charge made by Mr. Maloney is made the basis of the editorial.

"Now, if the Court please, this defendant, like every other defendant, has a right to a fair and impartial trial. He has the right to have his case go to a jury and have his case determined by a jury on the basis of the facts presented in this courtroom and on the basis of the law as conveyed to the jurors by your Honor. This case has been tried in the newspapers for months, months, and months.

"This was the basis of our motion before your Honor in January. The facts presented to your Honor at that time, coupled with the intervening events, have made it,
in our opinion, utterly and absolutely impossible
9 for this defendant to obtain a fair trial in this jurisdiction at this time. This charge made in connection with the Hill sentence, this charge that this defendant is a sworn enemy of this court, that—I think to put it conservatively, was a malicious charge. Its only purpose could have been to arouse hostility against this defendant, to prejudice the minds of the prospective jurors in this district; to positively make sure that this defendant would not receive a fair trial in this District. After all, that is a mighty dangerous thing these days. This country is at war and I think the Assistant Attorney General in charge of this case, who is thoroughly familiar with this indictment and who is thoroughly familiar with the

background of the situation, who is an experienced lawyer, I say, and I say without qualification, that he has abused, absolutely abused his privilege of office in making that statement before this Court at the time when he made it. After all, there is an absolute duty on a prosecuting officer to see to it that a defendant in a criminal case gets a fair trial. After all, it is a constitutional right given to every defendant in a criminal case. If prosecuting officers are going to violate that right, repeal that provision of the Constitution, that provision of the Bill of Rights by mere say so, by merely walking into court and making wild statements, why, we might just as well cross that out of the Constitution.

"Coming down to the press, whether the press has acted in concert with Mr. Maloney, or whether they have acted independently, I do not know. However, the fact of the matter is that the press, in our opinion, and I think the news items here justify it, have abused the privilege of self-expression also granted to the press and the people of this country by the same bill of rights which guarantees this defendant, as well as any other defendant in a criminal proceeding, a fair trial.

"I want to point out to your Honor a news item marked 'Washington Post, February 3, 1942,' where, amongst other things, the item refers to a case which was tried in this District last summer, the case of 'United States against Trans-Ocean News Service.' Trans-Ocean News Service was convicted in this court for a failure to file a registration statement with the Department of State pursuant to this same statute. During the Court of that trial there appeared a news item in the Washington papers. The news items charged that a witness in South America, a key witness in South America, who was to be used as a witness against that defendant and a witness by the

United States, was assassinated in Colombia when about to take a plane to Washington to come and testify in that case. The Washington Post, on February 3, 1942, saw fit to refer in some detail to that press item which appeared at that time.

"They neglected, however, to accompany the reference with the denial of the rumor which was published by the Colombian Legation, or issued by the Colombian Legation in Washington at the time and published in the local press.

"Now, I do not know for what purpose this reference is made. It is in conjunction and in connection with an article to the effect that an editor of a certain newspaper, one William Griffin, is missing, and I suppose, and I not see how anybody could read this new item without getting the same impression, namely, the inference that perhaps Mr. Griffin has been assassinated, too, by the hand of Mr. Viereck or someone at his behest. I do not know for what other purpose that reference could have been made in the way that it has been made.

"I would like to offer this news item to your Honor, and also a refreshing on February 6, referring also to the same general situation.

"Also appearing in the Washington Post.

"I have here also—I do not know from what paper it was clipped, but it is from a Washington paper—it calls this case an espionage case. Now, the defendant is indicted for a failure to include in certain supplemental registration statements certain alleged material facts. We come here to trial with an atmosphere built up by the press in conjunction with the Attorney General's office and with probably, if not actually, every prospective juror in this District holding in his mind the idea that this is an espionage case and that Mr. Viereck is a foreign enemy of this Court, and is therefore on

trial either for espionage or for treason. This matter has been bandied about in the press. I have only two or three others.

"As I say, they are only representative of what has been occurring in the press here during the last two or three weeks. Here is one from the Washington Times Herald wherein it headlines, 'Hill Viereck's Friend Sent to Jail.' Again, the Washington Post on January 14, and not content, on the morning of trial the Washington Post in fairly good sized headlines says, 'Viereck Master Nazi Agent Comes to Trial Here Today.'

"Now, we say, and I think we say with foundation and with reason, that this defendant cannot obtain a fair trial in this jurisdiction in this District at this time.

"We ask, therefore, that the motion made before your Honor in January be reconsidered in the light of
12 the facts presented to your Honor at this time. We ask that a change of venue be granted to some jurisdiction where the prospective jurors have not had their minds saturated with an element of hostility, with an element of hysteria, with an element of prejudice, where we can have fresh minds from which to choose a jury, an impartial jury, and give this defendant that which
13 he is entitled to, that which our constitution guarantees him, and that is the right to a fair and impartial trial.

"The Court: I think I should overrule this motion. You may have an exception to that, of course. You may bring in the jury."

The members of the jury panel were questioned concerning their reading of the newspaper publicity given the case in the District of Columbia newspapers when the following took place:

44 "Mr. Morosini: Now, I assume that you gentlemen living in the District read one or more or one

or the other of the newspapers published in the District of Columbia. I would like to ask you, therefore, whether any of you have read anything, anything at all in the newspapers about George Sylvester Viereck?

"We will start at this end, you are Mr. Baxter-

"Mr. Morosini: What have you read, Mr. Baxter?

"Juror Baxter: Well, I have read quite a good bit of it.

"The Court: I do not think the jurors should repeat what was read. I think he should indicate the paper that he read, something of that sort, but not the substance.

"Mr. Morosini: Yes. Without telling us the nature of the news items which you read, have you read very much about it or very little?

"Juror Baxter: I have read quite a bit of it, all that came out in the Star and in the Post.

"Mr. Morosini: In the Star and in the Post.

"Juror Baxter: Yes.

"Mr. Morosini: Mr. Baden.

"Juror Baden: I have read very little about it.

"Mr. Morosini: In what newspapers?

"Mr. Baden: I got about three a day. I have read a little bit of each and I have not read anything to any great extent.

"Mr. Morosini: How recently have you read that?

"Juror Baden: I have not read anything but the headlines for some time. I never did read very much of it, just the headlines, that is all.

"Mr. Morosini: Mr. Baer?

"Juror Baer: Yes, I have read it in all papers, except the Post.

"Mr. Morosini: Down to pretty much recent times?

"Juror Baer: Yes, sir.

"Mr. Morosini: Mr. Liebling, you have read quite a bit?

"Juror Liebling: Yes, I have read the Star and the Herald.

"Mr. Morosini: And that was over a long period of time?

"Juror Liebling: Yes, sir.

"Mr. Morosini: And you?

"Juror Leedy: I have read the headlines of the New York Star, but not regularly.

"Mr. Morosini: Anyone else?

"Juror No. 9: I have read something about it in the Post.

"Mr. Morosini: Recently?

"Juror No. 9: Not much recently.

"Mr. Morosini: You two gentlemen?

"Juror No. 2: Most in the Post.

"Juror No. 1: The last couple of weeks.

"Juror No. 11: All I have read is the headlines.

"The Court: I think it would be better to examine them on both lines only when they are in the box.

"Mr. Morosini: Now, starting with Mr. Baxter, you said you read quite a bit about it, as I understand. Do you think that what you have read would prejudice your mind against this defendant, insofar as this trial is concerned?

"Juror Baxter: Well, I do not know; you get some impressions from anything you read, and form some ideas and opinions.

"Mr. Morosini: That is necessarily true, isn't it? I mean, after you read it over a period of time you are bound to come to some conclusions about it?

"Juror Baxter: Yes, sir.

"Mr. Morosini: So, you can presently honestly say to us that you have formed some opinion about this defendant?

"Juror Baxter: I think so.

"Mr. Morosini: I would like to challenge Mr. Baxter for cause.

"Mr. Maloney: Well, now, your Honor please—

47 "The Court: Let me ask Mr. Baxter a question.

"From what you read, have you formed any opinion as to the guilt or innocence of this defendant?

"Juror Baxter: No, I don't think I have, but reading any articles—

"The Court: After reading it, are you in such a frame of mind that you will start out with some kind of a prejudice against the defendant?

"Juror Baxter: No.

"The Court: Or could you start out without any preconceived impression?

"Juror Baxter: I think so.

"The Court: And try the case only upon the evidence which you hear in the courtroom and the law?

"Juror Baxter: I think so.

"Mr. Morosini: Do I understand, Mr. Baxter, that you have formed no conclusion whatsoever as to the guilt or innocence of this defendant in connection with this case?

"Juror Baxter: No, I have just read the facts as presented in the newspapers, and then, of course, when you read quite a bit about a thing you have to follow it, and you just naturally form some opinion about it.

"Mr. Morosini: Do you honestly feel that that opinion would or would not tend to prejudice your reaction to this defendant?

48 "Juror Baxter: No, I don't think it would.

"Mr. Morosini: You could keep all that you have read and entirely divorce it from your mind in the trial of this case?

"Juror Baxter: I think so.

"Mr. Morosini: And you could judge it entirely
48 on the basis of the facts presented?

"Juror Baxter: Yes, sir.

"Mr. Morosini: What newspapers do you generally read?

"Juror Baxter: The Post and the Star.

"Mr. Morosini: Mr. Barton, the same effect would apply, from what you have read in the press, have you formed any idea of the guilt or innocence of this defendant in connection with this case?

"Juror Barton: Well, I have formed some sort of an opinion, when you read something in the newspapers. What I read in the papers wouldn't have any weight on me in this case or any case; it would be the testimony that would have weight with me, because I have seen a lot of things I knew about that was not as it was in the paper.

"Mr. Morosini: In other words, what you have read in the paper—

"Juror Barton: Would be discarded.

"Mr. Morosini: And nothing in connection with what you have read would have any prejudicial effect or prevent you from giving this defendant an impartial
49 trial?

"Juror Barton: No, sir.

"Mr. Morosini: Mr. Baer, what papers do you read?

"Juror Baer: Everything but the Post.

"Mr. Morosini: Everything but the Post.

"Juror Baer: Yes, sir, and I am afraid I might be opinionated, and from what I have learned from my duties as a juror in this court, I do not believe I could be fair.

"Mr. Morosini: I think your Honor should ask Mr. Baer to be excused.

"The Court: Yes, he will be excused.

(The juror is excused.)

"The Clerk: Mr. McReynolds, take Seat No. 4 in the jury box, please.

"Mr. Morosini: What is your name, sir?

"Juror McReynolds: McReynolds.

"Mr. Morosini: Mr. McReynolds, have you read anything about Mr. Viereck in the newspapers of the District of Columbia?

"Juror McReynolds: Yes, sir: I have read the headlines, I have not read any details.

49 "Mr. Morosini: Have you not read them very extensively?

"Juror McReynolds: No, sir.

"Mr. Morosini: What newspapers do you generally read?

"Juror McReynolds: The Star and the Post.

50 "Mr. Morosini: The Star and the Post?

"Juror McReynolds: Yes, sir.

"Mr. Morosini: Have you seen anything about it recently?

"Juror McReynolds: The fact that the trial was coming up.

"Mr. Morosini: Is there anything in connection with what you have read about Mr. Viereck in the newspapers which would prevent you from giving him an impartial trial in this case?

"Juror McReynolds: No, sir.

"Mr. Morosini: You have formed no opinion as to his guilt or innocence?

"Juror McReynolds: No, sir.

"Mr. Morosini: And nothing in those newspapers would tend to make you prejudiced against this defendant?

"Juror McReynolds: No, sir.

"Mr. Morosini: Is that correct?

"Juror McReynolds: That is true.

"Mr. Morosini: Mr. Baden.

"Juror Baden: Yes, sir?

"Mr. Morosini: Are you the one who raised your hand?

"Juror Baden: No.

"Mr. Morosini: Mr. Avon?

"Juror Avon: Yes, sir.

51 "Mr. Morosini: Have you read very much about it?

"Juror Avon: Not very extensively.

"Mr. Morosini: Is there anything in connection with what you have read which might cause you to be prejudiced against the defendant?

"Juror Avon: Not necessarily.

"Mr. Morosini: In other words, you feel that you can keep all that entirely separate and apart? I mean, I might ask this same general line of questioning of all you gentlemen who have raised your hands, and this goes for all of you.

51 "How about you?

"Juror No. 10: I have read and I have very much of an opinion.

"Mr. Morosini: And that opinion would prevent you from giving this defendant a fair and impartial trial?

"Juror Liebling: That is right.

"The Court: You may be excused.

(The juror is excused.)

"The Clerk: Mr. Milbourn, take seat Number 10.

52 "Mr. Morosini: Mr. Milbourn, have you heard these questions in connection with the newspapers?

"Mr. Milbourn: The only thing—to tell you the truth, I just read the big headlines, and I read something about Judge Goldsborough there.

"Mr. Morosini: You have read nothing since then?

"Mr. Milbourn: No.

"Mr. Morosini: Was there anything in connection with that article which in your own mind would prevent you from giving this defendant a fair trial?

"Mr. Milbourn: No.

"Mr. Morosini: I believe you stated that you knew Judge Curran.

"Mr. Maloney: I might state that it was not the intention of Judge Curran to remain at the Government counsel table all through the trial. He will not be actively associated throughout the trial.

Mr. Morosini: The fact that Judge Curran was here at the counsel table this morning, would that tend to prejudice you in any way in connection with this case?

"Mr. Milbourn: No.

"Mr. Morosini: There are a few other gentlemen who raised their hands. In connection with these newspaper articles which you have read, those of you who have raised your hands—is there anything about them, any-
53 thing that you remember or anything that you know in connection with them that might cause you to be prejudiced in any wise against this defendant in the trial of this case?

(No response.)

53 "Mr. Morosini: Have you formed any opinions which would tend to cause the formation of any opinions in your minds with respect to this defendant?

(No response.)

"Mr. Morosini: Any opinions that might be prejudicial?

(No response.)

54 "Mr. Morosini: Did any of you gentlemen read anything in the newspapers about the trial of United States against George Hill?

(Several hands are raised.)

"Mr. Morosini: In connection with that case, did you read anything about this defendant or any newspaper accounts of that case?

"Juror Baxter: Yes, sir; I did.

"Mr. Morosini: You read the Post, is that right?

"Juror Baxter: The Post and the Star.

55 "Mr. Morosini: Do you recall whether or not you read the Washington Post on February 6th or February 7th?

"Juror Baxter: I think I did. I read it practically every day.

"Mr. Morosini: You do.

"Mr. Baxter: Yes, sir.

"Mr. Morosini: Do you read the Post, Mr. Leedy.

"Juror Leedy: Yes, sir.

"Mr. Morosini: Do you recall whether or not you read the Post of February 6th or 7th?

"Juror Leedy: I would not remember exactly, but I believe I did.

"Mr. Morosini: Do you read it every day?

"Juror Leedy: I get it every day.

"Mr. Morosini: And you read it every day?

"Juror Leedy: Most of the time I read it in the morning.

"Mr. Morosini: Well, did anything that you have read in connection with the Hill case—anything that you read in connection with that case about this defendant, would that prejudice your minds one way or another against this defendant—any of you gentlemen?

(No response.)

"Mr. Morosini: In other words, I take it then that none of you have formed any opinion whatsoever
55 about this case and that you have formed no opinion
56 whatsoever about the guilt or innocence of the defendant in this case?

(No response.)

"Mr. Morosini: Do any of you believe that a person who is registered as a representative or agent for a German principal was unAmerican or was engaged in an unpatriotic pursuit?

"Mr. Baxter: I do.

"Mr. Morosini: You know, of course, that this defendant is on trial because of an alleged violation of an Act requiring principals or agents of foreign principals to register?

"Juror Baxter: Yes.

"Mr. Morosini: And you know also that the defendant registered as an agent for certain principals domiciled in Germany?

"Juror Baxter: Yes.

"Mr. Morosini: And it is in connection with that supplemental registration that this indictment was returned?

"Juror Baxter: Yes, sir; I have heard the statement.

"Mr. Morosini: Then you feel, do you, that Mr. Viereck, this defendant, was unAmerican and was engaged in an unpatriotic pursuit insofar as that representation of principals domiciled in Germany was concerned, is that correct?

"Juror Baxter: I think so, yes.

"Mr. Morosini: I challenge Mr. Baxter for cause.

57 "The Court: I will let Mr. Baxter go."

59 "The Clerk: Mr. Newberry, Frank M. Newberry take seat No. 4, please.

(Juror Newberry takes seat Number 4 in the jury box.)

"Mr. Morosini: Now, Mr. Newberry, have you read anything in the newspapers about Mr. Viereck?

60 "Mr. Newberry: Nothing more than the headlines in the Star.

"Mr. Morosini: Do you read the Post?

"Mr. Newberry: Yes, I do.

"Mr. Morosini: And nothing in connection with what you have read would create a bias in your mind?

"Mr. Newberry: No."

76 "Juror Padgett: No, only the headlines, not an article straight through.

"Mr. Morosini: Has anything in connection with those articles or anything in connection with what you
77 have read in the newspapers, has that prejudiced you one way or the other?

"Juror Padgett: No, sir.

"Mr. Morosini: Would it prejudice you, or prevent you from rendering a fair and impartial verdict one way or the other?

"Juror Padgett: No, sir.

81 "Mr. Morosini: Have you read about Mr. Viereck in the newspapers at all?

"Juror Sean: Well, off and on I have.

"Mr. Morosini: What newspapers do you generally read?

"Juror Sean: The Post, Washington Post, and Washington Daily News.

"Mr. Morosini: Did you read any of the accounts of the Hill case in either paper?

"Juror Sean: I did read, I believe, when he was sentenced.

"Mr. Morosini: Did you read an account of the proceedings in the courtroom when Mr. Hill was sentenced, in the Post?

"Juror Sean: Not a full account.

"Mr. Morosini: You, nevertheless, did read the account?

"Juror Sean: Yes.

"Mr. Morosini: You read some portion of it?

"Juror Sean: Yes.

"Mr. Morosini: Tell me about it.

"Juror Sean: I really couldn't tell you a comprehensive story about it, I just read it very lightly.

82 "Mr. Morosini: From what you have read in the papers have you formed any opinion or con-

clusion as to the guilt or innocence of this defendant, insofar as this charge is concerned?

"Juror Sean: No.

"Mr. Morosini: You have not?

"Juror Sean: No, I have not.

90 "Mr. Morosini: Have you read anything about Mr. Viereck in the newspapers?

91 "Mr. Watts: Simply the headlines: I did not go into the details.

"Mr. Morosini: What newspaper do you generally read?

"Mr. Watts: I read all of the local newspapers.

"Mr. Morosini: Did you read anything about Mr. Viereck in connection with the Hill trial?

"Mr. Watts: No, sir. I might have seen the headlines, but I did not go into it."

XVII.

Appellant's Connection With Flanders Hall, Inc.

232 **Sigfried Hauck** was called as a witness on behalf of the Government, and he testified that he and his two brothers were incorporators in 1939 of Flanders Hall, Inc., which had for one of its purposes the publication of a book written by the witness. This com-
273, pany did not then have and never had a printing
274 house of its own but had its printing done by others,
342 and Flanders Hall attempted to market the book.
234 The book was not a success.

A copy of the book was sent by the company to
235 Mr. Viereck, and shortly thereafter he wrote the company a flattering letter concerning the book, one of the few received. Thereupon the witness went
236- to see Mr. Viereck, and about March 1, 1940 went
237 to work for him, sharpening his pencils, hanging up window shades, and assisting in placing various

manuscripts into better English. The witness was then looking for work as a printing salesman and solicited printing work from the appellant, including the German White Book and a magazine, *Facts in Review*, which appellant was editing under his contract with the German Library of Information. Witness did not get this printing.

238

About June 1940 Mr. Viereck inquired of the witness whether his company would publish a booklet or pamphlet entitled "Lord Lothian vs. Lord Lothian". The following then occurred:

By Mr. Maloney:

"Q. Tell us the conversation that led up to the publishing of the book. Not word for word, but just the substance of it. A. Well, first Mr. Viereck came to me and said that he was thinking of forming a publishing company, and subsequently he decided not to form his own, but thought he might take over mine.

251

"Q. He decided not to form his own, but thought he might take over yours? A. Well, I don't remember whether he definitely decided not to take over his own or not, but he said he might want to take over Flanders Hall.

252

"Q. What did you say to that? A. Pardon me?

"Q. Go ahead. A. He asked me to bring all the books down to his attorney's office and said that they might look over it.

"Q. Who were his attorneys? A. Mr. Morosini and Mr. Cohalan.

"Q. The same two gentlemen who now represent him? A. Yes.

"Q. So you took all the books of Flanders Hall down to Cohalan & Morosini. Then what happened? A. Well, they apparently looked over them, because I got them

back maybe a week or two later, and the subject was more or less dropped—the purchase of Flanders Hall by Mr. Viereck.

"Q. All right. What happened next? A. Subsequently he suddenly decided that perhaps he could—he had some manuscripts and perhaps Flanders Hall could publish them for him just as Flanders Hall was then constituted, that is, without change of officers or stock or anything, and we discussed some sort of an agreement which we later put down in black and white more or less, whereby he would furnish us with a certain num-
253 ber of manuscripts—manuscripts that had to be published by Flanders Hall.

"Q. Now, can you tell us what the manuscripts were that Mr. Viereck at that time told you he would furnish to Flanders Hall? A. First, right off the bat, he did not mention any specifically, but later on he mentioned 'Lord Lothian against Lord Lothian' and 'It Happened Again.'

"Q. What else? A. A little while later, he had two more named 'Democracy on the Nile,' and 'Inhumanity Unlimited.'

* * * * *

257 "Mr. Maloney: May I, with the Court's permission, read this to the jury, sir? It is very short.

"'August 3rd, 1940.

"'Flanders Hall Publishers,
"'1800 Front Street,
"'Scotch Plains, N. J.

"'Attention Mr. Sigfried Hauck.

"'Confirming our oral agreement of August 2nd, it is hereby mutually agreed and understood:

"'I. Your Company, Flanders Hall, Publishers, being in the publishing business and seeking orders for the pub-

lication of books, pamphlets, etc., warrant that they can successfully undertake this type of work.

"'2. I have from time to time certain works
258 which I would like to see published and distributed and I am willing to advance the necessary expense for this purpose under proper term and conditions.

"'3. I agree to furnish you with manuscripts for books and pamphlets to be published by you and to pay all legitimate expenses, upon which we shall mutually agree in each instance, in connection with their publication and distribution, and I agree to hold you harmless from any claims or suits that may arise in respect to the right to publish and distribute such books.

"'4. You agree that out of the proceeds of the sales of any such books to the trade or individuals, after deducting your overhead at a figure to be mutually agreed upon between us, you will return the money I have advanced before any other charge is paid.

"'You also agree that should the proceeds derived from the sale of any one book be insufficient to reimburse me for the money advanced for the publication of that book, the unrepaid amount shall be charged against the next publication, and so forth. In other words, it is our intention and the essence of this agreement that all monies advanced by me, shall be returned to me before Flanders Hall Publishers can make any profit on the publication and sale of the books.

"'5. In view of my interest in the company and the obligations which I am taking upon myself, you
259 agree to make no disbursements, large or small, without my written consent; to furnish me weekly with a statement of expenses; to give me or my deputies access to the books of the company whenever requested. and to incur no liabilities on behalf of the company with-

out my knowledge and consent. Failure to abide by this clause will invalidate any obligation on my part toward the company.

"'6. In view of the aid I am giving you financially and by my literary advice and for one dollar, receipt of which you acknowledge by appending your signature to this letter, the Flanders Hall, Publishers, give me the option to purchase 66-⅔ per cent of their outstanding capital stock at a price not to exceed $500.

"'This option is to continue for two years from the date of this agreement.

"'Trusting that the relationship thus established will be mutually profitable as well as stimulating, I am,

"'Sincerely yours,

"'GEORGE S. VIERECK.'

"Bearing the handwritten signature:

"'Agreed:

"'Flanders Hall

"'By Sigfried H. Hauck, president.'

"By Mr. Maloney:

"Q. Now, I see this contract is dated August
260 3, 1940. Has the option to purchase two-thirds of the stock been exercised by the defendant, as yet, Mr. Hauck? A. No."

* * * * *

Upon cross examination **Hauck** testified:

437 "Q. Now, let us come down, Mr. Hauck, to the
438 period just before you entered into a contract with Mr. Viereck in connection with Flanders Hall, before that contract was made, you had several conversations with Mr. Viereck, is that correct? A. Yes.

"Q. Can you tell us in detail the conversations you had with him? A. Well, I don't know to what detail I can go.

"Q. Well, did Mr. Viereck tell you that he had some manuscripts that he wanted printed and published? A. He did.

"Q. Did Mr. Viereck tell you that he would like to build up a publishing business? A. Yes, he did.

"Q. Did Mr. Viereck tell you that he thought that he and your company could build up a successful commercial business, publishing business? A. He did.

"Q. Did he tell you that he would like to establish a substantial commercial publishing business so that after the war or at some future date he might step into it and have something to fall back on? A. He did.

"Q. Can you amplify this in any manner? I
439 am trying to recall it to you. A. He repeatedly said that he expected his publishing house, if he started a new one, or if he became more active in Flanders Hall, that it had a good chance of growing into a prominent publishing house in the future.

"Q. Now, in the contract or in the agreement which you made with Mr. Viereck, and which is in evidence here, under that contract the approval of Mr. Viereck was required for practically every operation the corporation undertook, is that correct? A. That is about it, yes."

* * * * *

Upon re-direct examination the witness **Hauck** testified:

452 "By Mr. Maloney:

"Q. Mr. Morosini asked you at some length about these rosy promises that Mr. Viereck made to you in his statements about how he was interested in building up a commercial publishing house. You believed all that stuff, didn't you, Mr. Hauck? A. I did.

"Q. And you really were interested in making some profit out of it, weren't you? A. I certainly was.

"Q. And of course the fact is that the company itself never did make any profit, did it? A. No, it did not.

"Q. It was a losing venture right from the very start? A. It had its ups and downs.

453 "Q. But it was a losing venture right from the very start, wasn't it? A. Yes, it was."

* * * * *

The witness **Hauck** testified that Flanders Hall

421 received from appellant the sum of $22,500 and that:

440 "The Witness: You want each date and each sum, and so on?

"Mr. Morosini: Yes. There are not very many of them, are there?

"The Witness: All right.

"By Mr. Morosini:

"Q. Is this 1940 or 1941? A. This is everything.

"Q. All right. A. August 19, 1940, $1,200.

441 These are moneys received. September 3, 1940, $900. September 9, 1940, $100. September 23, 1940, $500. October 10, 1940, $1,050. October 14, 1940, $1,000. October 29, 1940, $1,000. November 16, 1940, $2,000. November 30, 1940, $2,000. December 14, 1940, $2,000. January 2, 1941, $1,500. March 4, 1941, $500. March 11, 1941, $1,000. March 19, 1941, $2,000. March 24, 1941, $500. March 31, 1941, $500. I think this is either May or I think it is May 18th, 1941, $2,000.

"Q. Didn't you just give us that item?

"Mr. Maloney: There are two separate sums of $2,000 there.

"The Witness: It is March 18th, 1941, is $2,000, and then there are two $500 in between and then another $2,000.

"Those are the loans under the contract, and be-

442 sides that there are four other items, this money was received for books sold to Mr. Viereck. The

four items, I do not have the exact dates, but they are all in 1941, $250, $1,500, $500, and $500. That total is $2,750. Is that what you want, Mr. Morosini?

"By Mr. Morosini:

"Q. Yes, now, did Mr. Viereck tell you that any portion of those moneys came from the $10,000 received from Mr. Wirsing in this publishing house for the publishing and distribution of 'One Hundred Families'? A. Well, I don't recall whether he definitely stated so or not.

"Q. Well do you know whether or not any of the moneys which you have shown there came out of this $10,000? A. I don't know that, no.

"Q. Well, were you ever told that? A. I don't remember being told that.

"Q. You do not? A. No.

"Q. All right. At no time do you recall having been told any portion of that money that you received there came from that source? A. I don't recall having been told that."

* * * * *

The witness **Hauck** testified on direct examination that there were repayments to the appellant, the testimony being as follows:

394 "By Mr. Maloney:

"Q. Mr. Hauck, did Flanders Hall sell any more books to the Germany Library of Information, so far as you know? A. Yes, sir, we did one other time.

"Q. Will you look at your minute book and see if you can refresh your recollection as to when that sale took place, and how many books there were? A. It seems at the beginning of February, 1941, we sold 6,000 copies of 'It Happened Again' to the German Library of Information.

"Q. And how much did the company receive
395 for the 6,000 copies? A. $2400.

"Q. What was done with the $2400. Do your books show? A. Well, it seems we paid Mr. Viereck back $1,000 out of that money.

"Q. How much did you pay Mr. Viereck out of the first sale to the German Library of Information? How much did you give them out of the proceeds of that sale?

"Mr. Morosini: If the Court please, I do not think this is accurate testimony. If my own recollection serves me correctly, I believe the witness testified that they sold certain books and received certain moneys, that the corporation made certain payments back to Mr. Viereck on account of an indebtedness. I don't think that it appears that any portion of the moneys received from these sales were returned, as the question implies.

"Mr. Maloney: I will withdraw the question and ask him another.

"By Mr. Maloney:

"Q. Tell us just how the first sale to the German Library to Information was handled, and how the payment was handled? I mean, did the money come from the German Library of Information to the corporation, or did the money go to somebody else first? A. Mr. Viereck agreed to act as an agent for that sale. He collected for us.

396 "Q. Mr. Viereck collected from the German Library of Information? A. Yes.

"Q. And how much of the proceeds of the sale did Mr. Viereck retain and how much did he turn over to the company? A. Well, we received the payment, as we owed him money we turned it back to him as a payment on account.

"Q. In other words, the company got none of the proceeds of that sale, that first sale, and Mr. Viereck kept the entire $5500?

"Mr. Morosini: Just a moment, if your Honor please. I object to that as highly improper.

"The Court: Sustained.

"By Mr. Maloney:

"Q. Who collected the money from the German Library of Information? A. Mr. Viereck.

"Q. How much did he collect? A. $3500, I believe.

"Q. Did Mr. Viereck ever turn over to you any part of that $3500? A. As I recall, he did. That is the answer to that question.

397 "Q. When did you give him $3500? A. I think immediately after that I turned it back to him.

"Q. How was the payment made from the German Library of Information to Mr. Viereck? In cash or by check? A. As I recall it was cash.

"Q. And did Mr. Viereck hand you $3500 cash? A. As far as I remember.

"Q. And then you handed it right back to him, is that right?

"Mr. Morosini: I object to that.

"The Court: Objection sustained. Call for the transaction.

"By Mr. Maloney:

"Q. How about the second sale of books by the company to the German Library of Information? Who was your agent on that sale? A. Mr. Viereck.

"Q. Mr. Viereck again acted as agent. And who collected the money from the German Library of Information? A. He collected for us.

"Q. And how much was involved in that sale? A. $2400.

"Q. And how much of the proceeds of that sale ultimately reached the company? A. Well, as I re-
398 call, we received the whole $2400.

"Q. Who gave you the $2400? A. I think Mr. Viereck did.

"Q. And did you give Mr. Viereck back any part of the $2400? A. I think I gave him back $1,000 on account of his loans."

• • • • •

290 The witness **Hauck** testified on direct examination
294 and identified books published by Flanders Hall at
312 the request or direction of the appellant as including "The Slave Business", "Hapless Boers", "Democracy on the Nile", "Double Cross in Pale-
343 stine", "Cease Firing", "Turkey Reborn", "The One Hundred Families" and several others. The following took place:

344 "Mr. Maloney: I offer them in evidence.

"Mr. Morosini: If the Court please, I object to their admission on the ground they are immaterial to the indictment here, and particularly I want to call attention to the one book, 'The One Hundred Families that rule The Empire'. I would like to have it noted for the record, and also your Honor and the jury, that defendant registered in connection with the publication of this book. He was registered as the agent of one Wirsing, and a publishing house abroad. That registration statement is on file with the State Department, and is a part of the Government's Exhibit.

"I would also like to have it pointed out that no violation of that registration statement or of that registration is charged in the indictment. I therefore specifically object to the admission of that particular book on those grounds.

"The Court: The objection is overruled.

"Mr. Morosini: May I have an exception?

"The Court: You may have an exception.

(The books referred to, marked as Government's Exhibits 28 to 34, both inclusive, were received in evidence.)

345 "Mr. Maloney: May I just pass these among the jurors, briefly?

"Mr. Morosini: Have they been marked, Mr. Maloney?

"Mr. Maloney: Yes.

"So they may obtain a general idea of the type of book put out, but not to read through each one.

"The Court: Yes, I will ask the jury not to take the time to read them now, but just get the general idea.

"Mr. Morosini: If your Honor please, I would like at this time to move to strike from the evidence the book entitled 'The One Hundred Families That Ruled Great Britain' on the grounds hereinbefore stated, and on the ground that there is nothing in this indictment which involves that book; that that book, was as may be seen from the evidence before this Court, the Government's first exhibit was published pursuant to an agreement made with a foreign principal, which agreement was the subject matter of a registration statement with the State Department, and which registration statement is not involved in any way in this indictment.

"The only purpose, the only purpose that we can see for the introduction of this book is only one, and that is for the purpose of creating a prejudice. I therefore ask your Honor at this time to strike the Exhibit.

"The Court: Motion is overruled.

"Mr. Morosini: May I have an exception, please?

346 "The Court: Yes.

* * * * *

The witness **Hauck** testified that Prescott Dennett
346- was employed by Flanders Hall, Inc., with the ap-
358 proval of the appellant in an effort to secure publicity for the books published and being published by said company and in an effort to secure manuscripts of books from various people, including Congressmen, for publication. The following then took place while the witness was under direct examination:

359 "Q. Now, can you tell us what the report was that you received from Mr. Dennett, concerning the publicity of this book, 'The One Hundred Families'?

"Mr. Morosini: Now, if the Court please, I object again to any further reference to the book described here as 'The One Hundred Families'. This book was published and the work connected with it was done in this country, and as far as this defendant is concerned as an agent for a foreign principal for which he registered. Now, this book has been placed in evidence together with other books, which books we have stated on behalf of this defendant were published from his own personal funds. In other words, there is no agency, so far as this defendant is concerned, with these other books. The 'One Hundred Families' book is not involved in
360 this indictment. The only possible purpose of bringing in this testimony in connection with it is to prejudice this defendant.

"I renew my objection to any further testimony in connection with it. I also move again that it be stricken from the evidence and that the jury be instructed to disregard any and all references to it.

"The Court: The objection and the motion are overruled.

"Mr. Morosini: May I have an exception?

"The Court: Yes. And, incident to that, let me indicate that you have based your objection upon facts that

have not been brought to the attention of the Court in any manner.'

"Mr. Morosini: I beg your pardon, your Honor, the registration statements are in evidence. They were placed in evidence by the Government. I object to their going into evidence in the form in which they did because it was difficult to bring out the things there. Now, in that Exhibit is a registration statement filed by this defendant, which statement shows and specifically says that he is representing one Dr. Wirsing in a publishing firm in Germany; that he is representing these people for the purpose of publishing and putting in new—or distributing a book known as 'The One Hundred Families that
361 Rule the Empire', written by, I believe, Dr. Wirsing.

"He gives translations, English translations of his contracts; he states the amount of money he has received for this purpose. A full disclosure in connection with this publication of this book is made in that statement which is in evidence here.

"Now, in the indictment, there is not a single, solitary mention of this book or of this registration statement, which is far more important. This particular statement is not involved in any portion of this indictment. Now, I think the facts on which my motion is based, if the Court please, are properly before this Court.

"The Court: The objection is overruled.

"Mr. Morosini: May I have an exception?

"The Court: You may have an exception.

"By Mr. Maloney:

"Q. Did Dennett make a report to you at some subsequent time about his publicity efforts in connection with the 'One Hundred Families'? And if he did, will you tell us what his report was? A. Well, he made several reports.

"Q. Tell us about the one that is particularly referred to in the minutes of the corporation meeting. A. Should I read it or paraphrase it, or what?

"Q. You may read it first to refresh your
362 memory, and then tell us about it, if you please. A. Not read it aloud, you mean?

"The Court: No, just read it to yourself.

"By Mr. Maloney:

"Q. Just read it to yourself and then give us your memory on it.

"(The witness reads from a document.)

"A. Well, Mr. Dennett reported, or it somehow came to my attention that the book 'The One Hundred Families that Rule the Empire' was mentioned in a radio speech by Congressman Sweeney, of Ohio. It seems it was through Dennett's work that this occurred.

"Q. Who told you that Dennett had gotten Congressman Sweeney of Ohio to plug the 'One Hundred Families that Rule the Empire' in a national hook-up? Who told you that? A. I don't recall anyone told me. I may have received it in a letter from him—I am not sure about that.

"Q. Did you make an entry to that effect in the minute book of your corporation? A. I made an entry here to the effect that that had occurred, that speech had been made and the book had been mentioned."

XVIII.

Appellant and Speeches etc. of Senators and Congressmen Including Reprints Which Were Mailed Out.

241 Government witness **Sigfried Hauck** testified that while working for appellant he saw in the apartment of appellant certain manuscripts, including addresses
243 by Senator Lundeen on the floor of the Senate en-

titled "Lord Lothian versus Lord Lothian" and "Six
244 Men and War." The following proceedings were
had:

246 "Q. Did you observe from that reproduction of the Congressional Record whether that speech had been inserted under the remarks of Senator Lundeen or under whose remarks? A. I think it was Senator Lundeen.

"Mr. Maloney: May I have this marked for identification, please?

(Document is marked Government's Exhibit 3 for Identification.)

By Mr. Maloney:

"Q. I show you Government's Exhibit 3 for Identification, and ask you if that is the pamphlet entitled 'Six Men and War' which you saw?

(Document is handed to the witness.)

"A. That is it.

"Mr. Maloney: I offer in evidence Exhibit 3 for Identification.

"Mr. Morosini: I merely object to it on the ground that it has no relevancy to this defendant, and furthermore to the fact that it contains any number of pen and ink and pencil notations.

"Mr. Maloney: We are not offering the notation. Those were on in another trial, so we will eliminate those.

246 "Mr. Morosini: I still renew my objection on the
247 ground that it has no relevancy so far as this defendant is concerned.

"The Court: Overruled. The jury is advised that any notations in pencil or pen upon the printed matter is not a part of the exhibit.

(Government's Exhibit 3 was marked in evidence.)

"Mr. Maloney: May I just indicate to the jury the title of this exhibit, sir?

"The Court: Yes.

"Mr. Maloney: Ladies and gentlemen, this pamphlet is entitled 'Six Men and War,' speech of Hon. Ernest Lundeen of Minnesota in the United States Senate, July 11, 1940. The first part of the remarks start 'Speech of Hon. Ernest Lundeen.

'Mr. Lundeen: 'This is my war,' proudly proclaimed Izvotsky, Russian Ambassador to Paris in 1941. 'This is my war' might well be the boast of President Franklin D. Roosevelt, when he surveys the catastrophe that is engulfing civilization in Europe today.'

By Mr. Maloney:

"Q. Did you have any conversation with the defendant Viereck in which these two speeches which you have identified were mentioned? A. Well, when he gave me
248 the manuscript to work on, he told me just what he wanted, that he wanted it in better English, and I had done that work before.

"Q. Did he mention to you who he was writing the speeches for?

"Mr. Morosini: Now, if the Court please, I object to the form of the question. It assumes something which is not in evidence.

"The Court: Yes, I think you should reframe that question.

By Mr. Maloney:

"Q. Did Viereck tell you that he was writing the speeches for anybody else? A. Well, I don't know if he
248 told me or not. I didn't think he was going to make them himself.

"Q. You did not think he was going to make them himself. What else did he tell you or give you to understand about these speeches? A. I don't recall anything else. It was a job to do and I did it.

"Q. Did he make any mention of Senator Lundeen? A. I don't recall, no.

"Q. Let me direct your attention to this,—did Viereck ever mention to you the fact that he had written speeches for Senator Lundeen?

"Mr. Morosini: I object to these questions. I
249 don't mind testimony coming from the witness, but I don't beli e that Mr. Maloney should testify.

"The Court: I think it is leading.

By Mr. Maloney:

"Q. Will you tell us everything else that this defendant told you about these speeches that you worked on for him? A. I really don't recall anything.

"Q. Having exhausted your independent recollection on it, I want to ask you this question, and direct your attention to this particular subject matter.

"Did Viereck at any time make any mention to you of the fact that either or both of these speeches had been written by him for Senator Lundeen?

"Mr. Morosini: Now, if the Court please—

By Mr. Maloney:

"Q. (Interrupting) Do you remember that?

"Mr. Morosini: Just a minute. I object to this line of questioning, and I ask Mr. Maloney to be instructed to refrain from framing his questions in this form. I don't like to object every time a question is asked. It is a leading question. It assumes things not in evidence.

"The Court: Does that refresh your recollection or not?

249 "The Witness: No, I really cannot say that he did mention Senator Lundeen.

250 By Mr. Maloney:

"Q. I show you a paper-backed book entitled "Lord Lothian against Lord Lothian,"—is that one of the books published by Flanders Hall? A. Yes, sir.

"Q. Where did you get the manuscript upon which this book is based, 'Lord Lothian against Lord Lothian?' A. From Mr. Viereck.

"Mr. Maloney: I offer in evidence this copy of Lord Lothian against Lord Lothian, published by Flanders Hall.

"Mr. Morosini: I object to its introduction in evidence on the ground that it has no bearing on this indictment.

"The Court: Objection overruled; it may be received."

Government witness **Spielman** testified that she
762 had been an employee of the late Senator Lundeen and that she had seen the appellant in the Senator's office and in consultation with him on at least a half dozen occasions. In answer to the prosecuting attorney's question as to whether she knew whether appellant had worked on any speeches for Senator Lundeen she testified:
763 "The Witness: Yes, I do know that Mr. Viereck worked with the Senator on speeches.

By Mr. Maloney:

"Q. Can you name those speeches? A. Yes, I can name three of them. Lord Lothian against Lord Lothian, Six men and War, and a speech entitled 'Contributions of German-Americans to the United States.'

"Q. Do you recall any other speech which Mr. Viereck worked on in any way with Senator Lundeen? A. Yes, I do.

"Q. Will you state that, please. A. Mr. Viereck gave information—

"Q. (Interrupting) No. Did the speech have a
764 name? A. Yes.

"Q. What was the name of it? A. German-American Trade Relations.

"Q. Now, Mrs. Spielman, directing your attention to the first speech which you mentioned, Lord Lothian Against Lord Lothian, what did you see or hear between the late

Senator Lundeen and the defendant Viereck regarding that speech? Just give us the conversation or things you observed when the defendant Viereck was there?

"Mr. Morosini: May we have a time, please, fixed for this, if the Court please?

"Mr. Hickey: I will be glad to do that.

"By Mr. Hickey:

"Q. Will you place the date of that Lord Lothian against Lord Lothian speech? A. Yes, sir; June, 1940.

"Q. Now, will you answer the last question? A. Yes, your Honor. The Senator informed me that he was to get some material from Viereck that—

"Mr. Morosini: (Interrupting) I object, if the Court please, to any conversation at which this defendant was not present.

"The Court: You cannot give any conversations not in the presence of the defendant.

"By Mr. Hickey:

765 "Q. Did you ever see the defendant Viereck and Lundeen going over the Lord Lothian against Lord Lothian speech in the Record or otherwise? A. I did, your Honor, in the Record.

"Q. Will you tell us the conversation? A. Yes, sir.

"Q. What was it and who said it? A. Senator Lundeen and Mr. Viereck were looking over the Record in what is known as the Secretary's Office of No. 107.

* * * * *

766 "Q. Now, going back to the conversation you were about to relate, between Senator Lundeen and the
766 defendant Viereck, in connection with the Lord Lothian speech, what room did that take place in? A. In the secretary's office of 107.

"Q. What was said and by whom? A. Senator Lundeen and Mr. Viereck were seated at the table reviewing

the speech, Lord Lothian against Lord Lothian, that had been entered into the record, and Senator Lundeen said to Mr. Viereck, 'Well, there can be no objection to that, because it is actual quotations from Lord Lothian.'

"Q. Was anything further said at that time? A. A few minutes later, yes, sir.

"Q. Before we get to that, I hand you Government's Exhibit 2, which is a Congressional Record entry of the speech, 'Lord Lothian against Lord Lothian,' under
767 the Extension of Remarks of the Hon. Ernest Lundeen of Minnesota, introduced in the Senate of the United States on Wednesday, June 19, 1940, and I ask you if that to your knowledge was the speech which you observed Mr. Viereck and Senator Lundeen going over at the time this conversation ensued? A. Yes, sir; it is.

"Q. Now, what conversation, if any, occurred a few minutes later? A. As Mr. Viereck and Senator Lundeen were leaving the office that evening, the Senator said to Mr. Viereck, 'There is one thing, one mistake we made in that speech, and that is that we left out headings.'

"Q. Was he indicating the particular speech at the time? A. Yes, sir.

"Q. What speech? A. The one that they had just reviewed and looked over and which they had left on the secretary's table in the secretary's office.

"Q. Did Mr. Viereck say anything in response to Mr. Lundeen's observation that they left out headings, and should have put them in? A. Not that I recall at that time

"Q. Now, Mrs. Spielman, I now direct your attention
767 to the second speech which you mentioned, called
768 'Six Men and War'—was it? A. Yes, sir.

"Q. And I ask you the period of time in which any conversations or activities in connection with that speech occurred? A. That was in July, 1940.

"Q. July, 1940? A. Yes, sir.

"Q. Do you know when it was introduced into the Record? A. I think it was July 11th. I am not quite certain about the date.

"Q. Of 1940? A. Some time in July.

"Q. Prior to the introduction of that speech into the record, do you recall any conversations over the telephone between Mr. Viereck, Senator Lundeen and any other party? A. Yes, sir.

"Q. Will you tell us who placed the call that you are referring to? A. I placed the call at the Senator's request.

"Q. Whom did you call? A. I called for Mr. Hill in Congressman Fish's office.

"Q. Do you know Mr. Hill's voice? A. Yes, I do.

769 "Q. Did Mr. Hill answer the phone?

"Mr. Morosini: Just a moment, if the Court please. I don't think the identity of the person at the other end of the phone has been established?

"The Court: That is the subject of the present inquiry.

"Answer the question.

"The Witness: May I have the question?

By Mr. Hickey:

"Q. So that there won't be any confusion, did you pick up the telephone? A. Yes.

"Q. And you asked for Congressman Fish's of-

769 fice? A. Yes, sir.

"Q. What was the answer? A. One of the girls in the office answered, and I asked for Mr. Hill and she transferred me to Mr. Hill.

"Q. And Mr. Hill answered the phone? A. Yes.

"Q. And you knew Mr. Hill's voice? A. Yes, because he had talked to me before.

"Q. What did you do then? A. At that time I gave the telephone, of course, to Mr. Lundeen.

770 "Q. He asked you to place the call? A. He asked me to place the call.

"Q. Did you hear the conversation? A. Yes, I did.

"Q. As far as the Senator was concerned? A. Yes.

"Q. What did he say? A. They were talking about a future mailing that was going to be made of the speech—

"Mr. Morosini: (Interrupting) Just a moment. May we have this confined to what she heard the Senator say?

771 By Mr. Hickey:

"Q. You don't have to tell us the exact conversation. Give us the substance of it.

"Mr. Morosini: Do I understand this is a telephone conversation between you and Senator Lundeen and somebody on the other end of the phone?

"The Witness: Yes, sir.

By Mr. Hickey:

"Q. Mr. Viereck was present at the time? A. Yes, he was present.

"Q. Tell us in substance what Senator Lundeen said?

A. Senator Lundeen mentioned that he was going to

771 make a speech concerning the activities of six important men involving the United States in war, and that he wanted to talk about it, and he did talk in that instance about the mailing of it.

"Q. What happened next? A. Then the Senator gave the telephone over to Mr. Viereck, and at that time Mr. Viereck picked up the phone—

"Q. You were there at the time? A. Yes, sir, I was.

"Q. Did you hear what Mr. Viereck said? A. I was leaving the room just about that time that—at the Senator's direction.

772 "Q. Did you hear him say anything? A. The conversation I knew pertained to the same thing, because it was a general conversation—

"Mr. Morosini: Just a moment, if the Court please.

By Mr. Hickey:

"Q. Just what you heard. If you heard anything concerning the speech in any way, just tell us that. A. He mentioned directly the same six men who were trying to involve the United States in war, and that this speech would be delivered very soon.

"Q. Did he say anything about the speech being mailed out? A. Yes, he did.

"Q. You say you were leaving the room at that point? A. Yes.

"Q. What did you do then? A. I went over into the mail office and I was to order lunch for the men, or dinner, or whatever you want to call it.

"Q. What time in the night did this telephone call occur? A. That occurred, I think, between five and six o'clock, approximately.

"Q. And previous to that, had Mr. Viereck come into the office? A. Yes, he had come into the office.

773 "Q. About what time? A. I don't recall. It was about one or two o'clock in the afternoon. He had been expected that morning.

"Q. Let me ask you this. Did you receive any telephone calls from George Hill prior to Mr. Viereck's arrival at the office? A. I did.

"Mr. Morosini: Now, if the Court please, I must object to any testimony relative to telephone calls between George Hill and this witness, unless the defendant was present.

"The Court: Objection sustained.

"Mr. Hickey: I will withdraw the question.

By Mr. Hickey:

"Q. Tell us just what you did after you left the room? You went over to 107 again? A. Yes, I went to Room 107

and picked up the telephone in order to order supper for them.

"Q. Did you subsequently bring the dinner in? A. Yes.

"Q. For whom? A. For the Senator and Mr. Viereck.

"Q. Do you recall any conversations occurring at that point? A. Yes, sir, I did, because we returned back to 107.

774 "Q. And you were setting up the dishes for the dinner? A. That is right.

"Q. What conversations did you overhear, and by whom? A. Mr. Viereck was conferring with Senator Lundeen about this speech, 'Six Men and War,' and he mentioned the whole topic, and while I was setting up the table for them, putting the dishes before them—and the manuscript was before them, by the way—

"Q. Pardon me. A. The manuscript was before them while I was setting up the table.

"Q. The manuscript of 'Six Men and War'? A. Yes.

774 "Q. What did you hear that was said? A. Mr. Viereck turned to the Senator—they were sitting on one side of the table—and he said, 'I have tried to phrase it in the best way I could in the manner in which you speak,' and it struck me at the time, because the Senator always warned me about trying to—

"Mr. Morosini: I object to that.

"Mr. Hickey: Never mind that.

"Mr. Morosini: Could we have a time fixed for that?

775 "Mr. Hickey: It has been fixed, Mr. Morosini, in July, 1940.

"Mr. Morosini: This is still July?

"Mr. Hickey: Yes.

"Q. And after Mr. Viereck told Senator Lundeen, 'I have tried to phrase this the way you would say it,' did

Mr. Viereck say anything that you overheard? A. They were talking in general about the whole text, and as I was busy there at the time—

"Q. Did you overhear the conversation generally? A. Yes, sir.

"Q. It was discussing the speech? A. Yes.

"Q. And you say they had the speech before them? A. That is right.

"Q. Do you know how long they worked on this speech that evening? A. They were working on it yet when I left the office.

"Q. What time was that? A. Approximately 10:30 at night.

"Q. What time was it that you served them dinner? A. About 6:30. We had to wait a while before it came in.

776 "Q. Did Mr. Viereck make a remark directly as you left about 10:30? A. Yes, he did, because I had gone in to say good night and let them know that I was going to leave the office.

"Q. At that point were they still working on the speech? A. Yes, sir.

776 "Q. What did Mr. Viereck say? A. He said, 'You are quite an office wife staying around these hours.'

"Q. Do you recall any conversation the next morning concerning the speech, 'Six Men and War'? A. Yes, sir, with the Senator.

"What did he say? A. He had the manuscript in his hand when he came into the office and he said, 'Well, my voice is hoarse. I have been reading this whole thing over word for word.'

"Mr. Morosini: Do I understand this conversation was in the presence of the defendant?

"The Court: Was it?

"The Witness: No.

"Mr. Hickey: I submit the defendant is definitely connected with the conversation, however.

"The Court: Objection sustained.

777 By Mr. Hickey:

"Q. Did there come a time when a second telephone call was placed by you to George Hill? A. Yes, sir.

"Q. And did that telephone call occur in the presence of the defendant? A. Yes, sir.

"Q. And with whom else? A. Senator Lundeen.

"Q. And at whose request did you place the call? A. At Senator Lundeen's request.

"Q. Did you get Mr. Hill again on the telephone? A. I did.

"Mr. Morosini: May we have the time fixed for this, too?

By Mr. Hickey:

"Q. How much later as to the conversation in Senator Lundeen's office did the Senator and Viereck about this speech,—did this second telephone call occur. A. It

777 was approximately two weeks later.

"Q. Now, tell us—did you put the Senator on the wire when you got Mr. Hill? A. I did.

"Q. What did the Senator say? A. The Senator

778 wanted to know just how far Mr. Hill had proceeded in the mailing of the speech.

"Q. Did Mr. Viereck pick up the telephone? A. He did.

"Q. When the Senator concluded speaking? A. Yes, sir.

"Q. What did Mr. Viereck say? A. Well, he inquired as to the mailing and whether he had completed it as yet.

"Q. Did you hear any other conversation on that occasion? A. Nothing else that I can recall.

"Q. Nothing that you remember; all right. Now, Mrs. Spielman, I would like to direct your attention to another speech which you have stated the defendant Viereck worked on with Senator Lundeen. I think you gave the title as the 'German-American Trade Relations,' is that correct? A. That is correct.

"Q. Now, tell us how you know that? A. The Senator had asked me to get up some material concerning German commerce and trade with the United States, and one afternoon when Mr. Viereck was in the office he requested me to bring the information that I had gotten in the Library of Congress for him. I got it and he said it was not sufficient, that Mr. Viereck had better material and that he was going to use that.

779 "Q. And did anything subsequently occur— A. Yes, sir.

"Q. (Continuing) —in connection with this proposed speech? A. Yes, we were in 110 at the time, and he called in Miss Johnson to take some dictation from Mr. Viereck.

779 "Q. Who called in Miss Johnson? A. The Senator did.

"Q. Mr. Viereck was there? A. Yes, sir.

"Q. Did Miss Johnson take the dictation from the Senator? A. No, from Mr. Viereck.

"Q. From Mr. Viereck? A. Yes.

"Q. Did you hear any of the dictation? A. I only heard the beginning, because I left the room at that time.

"Q. Now, I think you mentioned one other speech entitled, 'Contributions of German-Americans to the United States.' A. 'Contributions of German-Americans to the United States.'

"Q. And is it your testimony that you know Mr.
780 Viereck wrote that speech? A. Absolutely, sir.

"Q. Will you tell us how you know that? A. The speech had three stages. First of all, the Senator wanted some concise material on the activities of people of German ancestry who lived in the United States. It was first done by Elmer Barnes—

"Mr. Morosini: If the Court please, is this witness telling a story or testifying to facts within her knowledge?

"Mr. Hickey: She is trying to explain how she knows.

"The Court: Was this in the presence of the defendant?

"The Witness: No, but it definitely ties up with the speech, which I said was in three stages.

"Mr. Morosini: I object to this.

"The Court: Objection sustained.

By Mr. Hickey:

"Q. Let me ask you this: Did you receive any
780 manuscripts by Mr. Viereck on the speech? A. I did.

"Q. And prior to that, did you send a manuscript at the request of the Senator to Mr. Viereck? A. I did.

"Q. And will you tell us about that? A. The manuscript that I was requested by the Senator to send to Mr. Viereck had been previously written by Dr. Rautzenberg.

781 "Q. And you sent it to Mr. Viereck? A. Yes, I did.

"Mr. Morosini: I object to this unless this is within the knowledge of this witness. There is no factual testimony.

"The Court: Inquire of the witness.

By Mr. Hickey:

"Q. Did you get back that same manuscript from Mr. Viereck? A. I did get back that same manuscript, only it was entirely different.

"Q. Entirely different? A. Entirely different; it was not the exact manuscript; it was not even worded the same

way, because the Senator wanted Mr. Viereck to entirely rewrite the whole thing.

"Mr. Morosini: Just a moment, if the Court please. I don't know whether the defendant was present when this was stated. This witness is volunteering information which is very difficult to fit into the factual situation, and I must object to it.

"The Court: Objection sustained.

* * * * *

Government witness **Harriet Elvira Johnson**, also a former employee in the office of Senator Lundeen, testi-
936 fied that she knew that the appellant assisted Senator Lundeen in writing two speeches—"German-American Trade Relations" and "Lord Lothian versus Lord Lothian." She then testified that:

937 "About a half hour later I received a call from Senator Lundeen that I should bring my note book and come down to 110. This I did.

"When I got to 110 the Senator informed me that Mr. Viereck was going to dictate an outline to be used in a
937 speech for the Senator, which the Senator was going to deliver before the German-American Board of Trade in New York on March 28th.

"By Mr. Hickey:

"Q. Was Viereck there at the time? A. Yes, he was. And Mr. Viereck began dictating the outline, and he dictated, I believe, six points.

"Q. Do you know what those six points were? A. I don't remember each definite point, but they covered the import and export trade between Germany and America, and the betterment of trade relations, and commercial treaties, and material like that.

"Q. You say he dictated the six points? A. Yes.

"Q. Did you type it up for him there, or somewhere else? A. No, I typed it in room 110. I made three
938 copies, besides the original.

"Q. Mr. Viereck and the Senator were there all the time you were typing this? A. Yes, they were there all the time.

"Q. Then what did you do? A. Upon the Senator's instructions, I gave Mr. Viereck the original and two copies and gave one carbon copy to the Senator. They discussed the outline and decided it was O. K.

"Q. Do you recall any further conversation while you were in the room, in connection with this speech? A. Yes. After they had read over the outline, Mr. Viereck turned to the Senator and said he would go down to the German Embassy and get the material to fill in the outline, and see to it that this material was delivered to the Senator within a few days.

"Q. Was that material delivered within a few days? A. Yes, two or three days later a gentleman, who identified himself as being from the German Embassy, came in and gave me a sealed envelope with the remark that this was the material for the Senator's speech in New York.

"Q. Do you recall whether or not the envelope
938 which was handed to you had anything on it con-
cerning the Embassy? A. Yes, on the upper left
939 hand corner it was printed, "The German Embassy" and in the lower right hand corner it had Senator Lundeen's name, '107 Senate Office Building.'

"Q. And you say the man identified himself as being from the German Embassy? A. Yes.

"Q. Do you remember his name? A. No, I don't recall his name.

"Q. What did you do with the envelope? A. I took the envelope and typed up the notation to the Senator of

it, and that the man from the German Embassy had delivered this, and pinned the notation to the envelope, and put it on the Senator's desk in his private office."

* * * * *

940 "Q. Now, Miss Johnson, I think you mentioned one other speech that Viereck worked on with the Senator, the Lord Lothian speech? A. Yes.

"Q. Lord Lothian against Lord Lothian? A. Yes.

"Q. When did that occur? A. Oh, about June, 1940.

"Q. June of 1940? A. Yes.

"Q. Now, tell us the facts upon which you base the statement which you have made that Viereck worked on this speech. A. Well, one afternoon the day after the speech had been inserted in the Congressional Record, we received fifty copies in the office, and I was supposed to send those copies out.

"Mr. Morosini: I am sorry—I did not hear it all, but I object to this witness testifying to things not in the presence of the defendant, things which are not within her knowledge.

By Mr. Hickey:

940 "Q. Did this occur in the presence of the defendant? A. Well, the speeches came in first.

941 "Q. Then Mr. Viereck came in? A. Yes.

"Q. Just tell us about what happened when Mr. Viereck came in. A. Later on in the afternoon Mr. Viereck and the Senator came out of the Senator's office and as they were coming out the Senator remarked to Mr. Viereck, 'There is one thing we forgot in the speech—'

"Q. He said 'we'? A. Yes.

"Q. You are sure about that? A. Absolutely.

"Q. What did he say, again? A. 'There is one thing we forgot in the speech, 'Headings.' And after the Senator made that statement he pointed to a pile of Congres-

sional Records we had on one of the desks, and those records contained the Lord Lothian speeches.

"Q. How many were there on the desks? A. Approximately fifty. They were about that.

"Q. They were ordered by the office? A. Yes, to send to the press of Minnesota."

* * * * *

Government witness **Hill**, who was then under sen-
518 tence imposed by Mr. Justice Letts for perjury before the Grand Jury testified in direct examination
519 that:

"Q. Will you tell the court and jury when you
519 first met Mr. Viereck and where you first met Mr. Viereck? Just tell us the month of the year and where it was that you first met him? A. During July—the latter part of June or the first part of July, 1940, in the office of Congressman Fish.

"Q. Now, will you tell the Court and jury the circumstances under which you met Mr. Viereck in Congressman Fish's office in July, 1940; who introduced you to
520 him, and so forth? A. He came from the private office of Congressman Fish.

520 "Q. Was Congressman Fish there at that time? A. He brought him in.

"Q. Did Congressman Fish bring him to you? A. He brought him over to me.

"Q. Tell us what conversation followed? A. He said he had some speeches to send out.

"Q. Who said that? A. Mr. Fish,—that this gentleman had some speeches he wants you to send out of Senator Lundeen.

"Q. He said he had some speeches of Senator Lundeen's? A. Yes, sir.

"Q. That he wanted you to send out? A. Wanted me to take care of them for him.

"Q. Did Congressman Fish indicate to you where you were to send those speeches? To what mailing list? A. He told me to send them to the mailing list of the National Committee to Keep America Out of Foreign Wars.

"Q. Go ahead and tell us the rest of that conversation? What else happened, Mr. Hill? A. He, Mr. Fish, went on and left me with Mr. Viereck.

"Q. Did you have a conversation with Mr. Vier-
521 eck after Mr. Fish left the room? A. I did. He asked me how many names we had, and I told him about 100,000, and he doubted it, so I got a list to prove it, and said we had at least 100,000.

522 "Q. Now, going back to your conversation with Mr. Viereck, did you ask him what speech it was of Senator Lundeen that he wanted to have you mail out, did he tell you? A. I think he told me, I didn't ask him, he told me.

"Q. What did he say to you? A. 'Six Men and War.'

"Q. 'Six men and War.' A. Yes, sir.

"Q. Did you ask Mr. Viereck who was going to
522 pay the expenses of mailing out this speech of Senator Lundeen's? A. He told me for all details to contact Senator Lundeen's office.

"Q. Those details included payment? A. Pay-
523 ment and getting them sent to me, and everything else.

"Q. Did Mr. Viereck indicate to you how many thousands of copies of this speech that he had, he wanted to mail out? A. He said it would be about 125,000.

523 "Q. Subsequently, did you cause to be mailed out the speeches of Senator Lundeen? A. I did.

"Q. Tell the Court and jury just how you did that, how you went about it? A. They were sent over to the House Office Building from the Senate Office Folding Room, and they were stored in the subway of the New House
524 Office Building. I then bundled them out to people throughout the city that did addressing for me.

"Q. And they were mailed to this mailing list which Congressman Fish told you to go ahead and mail them out to, is that right? A. Yes.

"Q. Did you get paid for this work that you did in connection with mailing out Senator Lundeen's speeches? A. I did.

"By the way, do you remember how many there were of Senator Lundeen's speeches? A. I put out 125,000.

"Q. Did you get paid for it? A. I did.

"Q. Who paid you, Mr. Hill? A. Senator Lundeen.

"Q. Did he get paid all at once, or on more than one occasion? A. It was on two occasions.

"Q. How much did you get paid? A. $125 each time.

524 "Q. Before you got paid, did you try to reach Senator Lundeen several times? A. Several times.

525 "Q. Did you have any success? A. I couldn't locate him.

"Q. And what did you do when you could not locate Senator Lundeen? A. Well, about 50 per cent of the speeches were addressed, and the people that did the addressing were worrying me about their money. So I contacted Senator Lundeen's office to find out about the money to pay the addressers.

"Q. Did you get any money on that occasion when you contacted Senator Lundeen's office? A. No, I didn't.

"Q. You did not? A. No, I did not.

"Q. What did you do then? A. I called Miss Posovic

after that again and I explained that I had to have this money or I would have to stop addressing the speeches. I told her that Mr. Viereck had said that the Senator was going to pay for it and she said she didn't know who was going to pay for it, so I got worried and wrote to Mr. Viereck.

"Q. Did you receive a reply from Mr. Viereck? A. I did.

"Q. And what did that reply tell you? A. He told me—

526 "Mr. Morosini: Now, just a minute, if the Court please, I submit the letter itself is the best evidence.

By Mr. Maloney:

"Q. Do you have the letter you got from Mr. Viereck? A. I do not.

"Q. Do you know where it is now? A. No, I do not.

"Q. Do you know whether or not it has been destroyed? A. I think it has.

526 "The Court: You may ask for the secondary evidence.

By Mr. Maloney:

"Q. Can you tell us what Mr. Viereck said in that letter, what did he tell you to do? A. He said he was only the intermediary—

"Mr. Morosini: Now, if the Court please, I object to any further reference to this letter on the ground that the letter is the best evidence.

"The Court: But the witness says that it has been destroyed, he thinks it has been destroyed.

"Mr. Morosini: Did he destroy it?

"The Court: He said he thought it had been destroyed.

"Mr. Morosini: May I ask the witness, did you yourself destroy this letter?

"The Witness: I think I did.

"Mr. Morosini: You did?

527 "The Witness: Yes.

"Mr. Morosini: I submit to your Honor, in view of the fact that the witness himself has destroyed this letter, that the best evidence having been destroyed by the witness, he should not be permitted to testify otherwise.

"The Court: The Court thinks that the best evidence having been destroyed, it is proper to take secondary evidence.

"Mr. Morosini: May I have an exception?

"The Court: Yes.

By Mr. Maloney:

"Q. Go ahead. A. Mr. Viereck said he was only the intermediary and that the Senator was to pay—I understood the Senator was to pay for the speeches.

"Q. Now, did you thereafter receive payment from the Senator? A. Shortly after I received a call to come over and get my money.

"Q. Can you tell us how shortly after that was?

527 A. No, I couldn't, but it was not very long.

"Q. Within a day or so? A. Possibly.

"Q. By the way, these 125,000 copies of Senator Lundeen's speeches, under whose frank were they mailed out? A. Under Senator Lundeen's.

* * * * *

Government witness, **Congressman Hamilton Fish**, testified on direct examination as follows:

670 "Q. Mr. Fish, did you in the month of August, 1940, or let us put it, the months of July or August, 1940, introduce your clerk, George Hill, to the defendant George Sylvester Viereck? A. Well, I would not know about the dates, but I certainly would not quibble about the dates. I did not have that recollection, if I did, until I

read Mr. Hill's testimony. I was under the impression that Mr. Viereck had met Mr. Hill by himself in my outer office, but evidently, from his testimony—and I am not going to quibble with that—Mr. Hill claims I went outside of my office and to his office and introduced Mr. Viereck, and I see no reason, although I do not recollect it, I see no reason to deny it.

"Q. You see no reason to deny it? A. I do not see any reason to say it was not possible—I would rather put it that way.

"Q. You would not say it did not happen, would you, Congressman? A. I would rather say it might very well have happened.

"Q. And prior to the time when you might very
671 well have introduced Mr. Hill to Mr. Viereck, did you have a conversation with Mr. Viereck in your private office? A. Well, I could say 'Yes.' This is a year and a half ago.

"Q. Did that conversation that you had with Mr. Viereck in your private office relate in any way to the mailing list of some speeches of Senator Lundeen? A. That I could not tell you with any degree of truthfulness or accuracy at all, because I don't remember anything about the conversation in any particular.

671 "Q. Perhaps I can refresh your memory. A. I will be very happy.

"Q. Did the conversation have to do with the speeches of Senator Lundeen? A. Well, there again I could not answer that, because I have not the faintest idea now whether—if you had asked me a week later I might have—but I have not the faintest idea now whether it had anything to do with Senator Lundeen's speeches.

"Q. Did you ever discuss with Mr. Viereck, Senator Lundeen's speeches or their distribution? A. That I don't remember.

"Q. Is it possible that you might have? A. I might have, yes.

"Q. It is also possible that you might have dis-
672 cussed with Mr. Viereck on this occasion when he met Mr. Hill, the distribution of Mr. Lundeen's speeches? A. It is possible, but that is not according to my own memory though.

673 "Q. Did you know that Mr. Hill was sending
674 out 125,000 copies of Senator Lundeen's speech to that mailing list? A. No, I did not.

"Q. You never did know that? A. Well, I saw it in the paper yesterday.

"Q. And that is the first time you knew it? A. That is the first time I knew anything about 125,000. I have never seen the speech.

"Q. But is that the first time that you ever knew that Senator Lundeen's speech was being mailed to that mailing list of the National Committee to Keep the United States out of Foreign Wars? A. Well, I have heard about it in the papers before this.

"Q. And is it not a fact that you directed Mr. Hill to mail out Senator Lundeen's speech to that mailing list? A. No, I could not say that at all; I have no memory
674 of that at all.

"Q. You don't remember that? A. Yes.

"Q. That might be the fact, but you don't remember? A. That might have been the case.

"Q. You have no independent memory of it now? A. I certainly would have no reason not to do it."

* * * * *

On cross examination **Mr. Fish** testified that:

"Q. Did you know that besides his activities in
680 your office, he was doing some extra work on the outside? A. That is a very difficult question for me

to answer yes or no. Mr. Hill was—I knew this—was a private contractor, sending out speeches, mailing them, employing women on the outside.

"Q. Well, he was not doing that on your office time for you, was he? A. No, he was not.

"Q. Then the answer is that he was, to your knowledge, doing work outside of his office hours with you? A. That is right, that is right, outside of my office hours, he was acting as a private contractor, using women to send out and mail out addresses of other members of Congress. I don't think, I don't know, I don't think anything went out except speeches of members of Congress. And I want to make very clear that as far as I know that no Nazi propaganda went out from my office with my consent or knowledge. May I finish that sentence? You asked me the question whether I knew about this private business of Mr. Hill's, which was on the side, to make some extra money. I understand now that he sent out some 20 speeches of members of Congress on a commercial basis through these women outside. I did not know that any of those speeches were sent out, and did not know until six months later, until I read it in the newspapers. That is why it was difficult for me to answer your question yes or no. He was acting as a private contractor, evidently, for commercial reasons, but these speeches went out not from my office, but through these women outside of my office, that I knew nothing about, and I didn't know anything about any of these speeches going out. And when I found out six months later that there were some 20 speeches —I am not finding fault, they were all, I understand, aimed to keep us out of war, and that is the thing I was more interested in than anything else, but I didn't know."

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607 Government witness Hill was recalled to the witness stand for further direct examination and over objections of the appellant the prosecuting attorney had him identify and then were placed in evidence as having been mailed out by Hill, the speech "Six Men and War" by Senator Lundeen and the envelope in which it was mailed. The prosecuting attorney read from the envelope "Europe for Europeans, Asia for Asiatics, and America for Americans." The following then took place.

611 "Mr. Maloney: Now I go, ladies and gentlemen, to the envelope in which this speech 'Six Men and War' was mailed under the frank of Senator Lundeen, and I read the first line in the box on that envelope: 'Europe for Europeans, Asia for Asiatics, America for Americans.'

"I will read from the last page of Exhibit 3, which is the reprint of the speech of Senator Ernest Lundeen written by the Defendant Viereck. The last page reads: 'Europe for Europeans, Asia for Asiatics—'

"Mr. Morosini: (Interrupting) Just one moment. May I object to counsel's characterizations assuming facts in issue, and assuming facts not in evidence. If he is going to read from an exhibit, may I have him instructed to read just from that exhibit without placing his own characterizations of it on the record?

"The Court: He will have that instruction.

"Mr. Maloney: I am reading from the last page of this Exhibit 3, the speech of Ernest Lundeen, concerning the author of which there has already been testimony. It
612 reads as follows: 'Europe for the Europeans, Asia for the Asiatics, America for the Americans.'

612 "May I hand two of these exhibits to the jury at this time, sir?

"The Court: I do not want the jury to take the time to read them. You can do that at another time."

* * * * *

The Government witness **Mrs. Weber** testified to talking with the appellant in his New York City apartment said:

"Q. Now, did Mr. Viereck say anything else to
547 you while you were in his apartment? A. Yes, he did, he said that he had organized, he and Mr. Bennett and Senator Lundeen and Mr. Gale had organized the 'Make Europe Pay War Debts Committee.'

"Q. He told you that? A. That is what he told us, yes, he said it was their idea, or words to that effect."

* * * * *

Mr. Weber testified that:

591 "Q. Did Mr. Viereck mention anything concerning the demise of the Committee? A. Oh, yes; Mr. Viereck seemed a little surprised to have received the box from Washington, and he told me he thought at first that the Committee had folded up and he had been bequeathed the remains. And then Mr. Viereck, in his hospitable manner, gave us a glass of wine and we chatted generally for a few minutes, and he told me—he told us, rather, that Senator Lundeen, Linn Gale, and Prescott Dennett
592 had formed the Committee, and to the best of my knowledg Mr. Viereck said that it was his idea."

* * * * *

596 Through Government witness, **Mr. Weber**, who had worked for the "Make Europe Pay War Debts Committee," Prosecutor Hickey introduced in evidence, over objections of appellant, a reprint from the Congressional Record of remarks by Congressman Thorkelson and while Prosecutor Maloney had Hill under direct examination the following took place:

609 "Mr. Maloney: May it please the Court, and ladies and gentlemen of the jury: The first Exhibit I would like to read a part of is Exhibit 57, which is the reprint from the Congressional Record, which is entitled,

'The Danger of Invasion,' which the witness Web-
609 ber identified as one of the reprints mailed out by
the Make Europe Pay War Debts Committee. It is
the reprint of certain remarks of the Honorable J. Thorkelson of Montana in the House of Representatives, inserted in the Record under his extension of remarks on Saturday, June 22, 1940. It reads as follows:

'Mr. Speaker, I am inserting this article in the
610 Record because although it was carried in the
Hearst papers and in the Washington Times Herald, it is pertinent at this time when other papers are trying to lead this nation into another foolish war.'.

"Then a little further on he sets forth what appears to be an article from the paper. The headlines of the article is 'Hitler Disclaims any Desire to Invade this Hemisphere. Terms Fifth Column Fears as Stupid, Denies Aim to Smash British Empire.' On the back, on the reverse page of that, there is just one line I would like to read. It is a quotation—this appears to be an interview between Karl H. Von Wiegand, chief foreign correspond of the Hearst newspapers and Adolf Hitler. The interview took place with Hitler and Von Wiegand as the German armies were nearing Paris on June 14, 1940. There is just one line here which I would like to read now, a quotation from Mr. Hitler:

'Therefore I say, America for Americans, Europe for Europeans.'

"Mr. Morosini: Just one moment. Mr. Maloney, will you state for the jury what newspaper this article referred to was taken from?

"Mr. Maloney: The Washington Times Herald. It appears as stated here: 'I am inserting this article in the Record, because although it was carried in the Hearst

papers and in the Washington Times Herald, it is
611 pertinent at this time when other papers are trying to lead this country into another foolish war.' It sets forth another newspaper article dealing with the interview between Von Wiegand and Hitler and carries the quotation of Hitler, 'Therefore I say, America for Americans, Europe for Europeans.'"

* * * * *

613 By Mr. Maloney:

"Q. Now, can you tell us, or is there any way
613 in which you can tell us what that material was or what the title of it was, and if you had it inserted in the Congressional Record under whose Extension of Remarks did you have it inserted? Can you tell us that?

"Mr. Morosini: May I at this time have an objection to this line of testimony, on the ground that it is entirely irrelevant and immaterial, in so far as this defendant is concerned and in so far as this indictment is concerned.

"The Court: You may.

"The Witness: 'England expects Every American to do His Duty' was inserted in the Record by D. Worth Clark.

"By Mr. Maloney:

"Q. Who gave you the proof or the material for that matter 'England Expects Every American to do His Duty'? A. Dennett.

"Q. And you had it inserted in the record under the Extension of Remarks of Senator D. Worth Clark, is that right? A. That is right.

"Q. Did you obtain the permission of anybody
614 in Senator Clark's office to have that inserted in the Record under his Extension? A. Yes, of his secretary.

"Q. And thereafter, did you order any reprints of the

article entitled 'England Expects Every American to do His Duty'? A. I did.

"Q. Can you tell us how many thousands of copies you ordered? A. There was two orders, I don't know just how many, but I know it was a great number.

"Q. What was the first order? A. I can't get that.

"Mr. Morosini: May I have it indicated that the witness is reading from Government's Exhibit, whatever number it is.

"Mr. Maloney: Government's Exhibit 55.

"Mr. Morosini: Government's Exhibit 55.

"The Court: It may be so noted.

"Mr. Morosini: May I have it also further indi-
614 cated for the record that counsel is instructing the witness what portion to read?

"Mr. Maloney: I am not instructing the witness what portion to read, I have called his attention to a fact
615 which appears and which is already in evidence, that he ordered 60,000 copies of this speech, right on the exhibit.

"The Court: The record will show that the exhibit is in the hands of the witness.

"The Witness: I ordered 60,000 copies at one time, I think I ordered some more at another time.

By Mr. Maloney:

"Q. Tell us about the 60,000 copies you ordered, how much did you pay for them, according to that record? A. $251.05.

"Q. Whom did you pay that money to? A. Mr. Harris, the Government printer.

"Q. Who gave you that $251.05? A. Prescott Dennett.

"Q. How did he give you that, in cash or by check? A. In cash.

"Q. Now, will you look further and see if you had occasion to order any more copies of 'England Expects Every American to do His Duty'? A. I did.

"Q. Can you tell us the date on which you ordered that? A. The writing is so small here I can't hardly see it.

"Q. Can you make out that writing? A. March 31st.

616 "Q. March 31, 1941? A. 1941.

"Q. How many copies did you order on that date? A. 25,000.

"Q. How much did you pay for them? A. $122.45.

"Q. Where did you get that money from? A.

616 From Prescott Dennett.

"Q. Where did you send these two orders of speeches to? That makes a total of 60,000 and 25,000, making a total of 85,000, is that right? A. That is right.

"Q. What did you do with these reprints after you got them? A. I think I bulked them out—bulked them out to individuals.

"Q. Who told you to bulk them out to individuals, at whose instructions? A. At Dennett's instructions.

"Q. Dennett's instructions? A. Yes.

"Q. Now, did you ever send any copies of these speeches, reprints of which you ordered, to the defendant Viereck? A. I did.

617 "Q. At whose suggestion or direction did you do that? A. Prescott Dennett.

"Q. Keep your voice up, please. Who was it? A. Prescott Dennett.

"Q. How many copies or reprints of each speech did you send to Viereck at Dennett's direction? A. Generally around twelve.

"Mr. Morosini: I object to this line of questioning, if the Court please, on the ground there has been no connec-

tion up to this point, and furthermore, I do not know whether he is reading this from the exhibit or not, and I would like to have it indicated if it is possible to determine whether or not he is testifying on the basis of recollection, or whether he is reading from that. I object to this line of questioning.

"The Court: The Court thinks he should testify from his own recollection, but that he should be privileged to use this, perhaps, to refresh his recollection.

"Mr. Morosini: If the Court please, I renew my
617 objection on the ground that it has not been made clear that Viereck has had anything to do with this, I ask it be stricken out.

"The Court: Motion overruled.

"Mr. Morosini: May I have an exception?

618 "The Court: Yes.

By Mr. Maloney:

"Q. Now, did you ever order any reprints of a speech —I beg your pardon, strike that, please. Did you order reprints of a speech or article entitled 'Giddy Minds and Foreign Quarrels'? A. I did.

"Q. Can you tell us how that particular matter came to get into the Congressional Record? A. It was brought to me by Prescott Dennett and he said he couldn't get anyone to put it in the record.

"Q. Yes, go ahead. A. I took it over to Miss Shanks in D. Worth Clark's office, and she put it in the Record for me.

"Q. Keep your voice up. What did you do after you got it from Dennett? A. I took it to Senator Clark's office and gave it to Miss Shanks.

"Q. And what did she do with it? A. She had it inserted in the Record for me.

"Q. Did you see it printed in the Congressional Record thereafter? A. I did.

"Q. Did you order some reprints of that par-
619 ticular article? A. I did.

"Q. How many thousands? A. 25,000.

"Q. How much did you pay for them? Can you read the writing on that exhibit, Mr. Hill? A. I cannot read this writing.

"Q. Can you tell us of your own independent recollection without looking at this exhibit? A. No, I cannot.

619 "Q. 'Giddy Minds and Foreign Quarrels,' how many copies did you order? A. 10,000.

"Q. How much did you pay for it? A. $73.45.

"Mr. Morosini: May I again have it indicated for the record, if the Court please, that the witness is reading from the exhibit, and that the witness is being instructed by counsel as to what to read?

"The Court: Well, the witness is instructed to use that only to refresh his recollection, if it does.

"Mr. Morosini: May I therefore have the testimony stricken?

"The Court: Motion is overruled.

"Mr. Morosini: May I have an exception.

"The Court: Yes.

620 By Mr. Maloney:

"Q. Now, this is Exhibit 55, which is already in evidence. On Exhibit 55 there is a notation, 'Giddy Minds and Foreign Quarrels.' Did you cause that to be placed in the Congressional Record? A. I did.

"Q. Can you tell us how many copies you ordered reprinted off it? A. 10,000 at that time. I think there was another reprint, I am not sure, but I think there was another reprint.

621 "Q. Where did you get the draft or the manuscript for this article from? A. From Prescott Dennett.

"Q. Where did you get the $73.45 from, which it cost you to have 10,000 copies reprinted? A. From Prescott Dennett.

"Mr. Morosini: May I have the record indicate that the witness is reading from the exhibit and that counsel for the Government is pointing out to the witness that portion to be read?

"The Court: The record may so show.

"Mr. Maloney: May the record also show that the witness has stated that because of the rather dim
621 light and his poor eyesight, he cannot pick these things out for himself, and would prefer to have Government counsel indicate where they are on this large chart—

"Is that true?

"Mr. Morosini: If the witness has stated that, if the Court please, we, naturally, can have no objection, but I would like to have it pointed out when and where the witness so stated.

By Mr. Mahoney:

"Q. Is that the fact, Mr. Hill? A. That is the fact.

"Mr. Maloney: Right here is where it is pointed out, Mr. Morosini.

622 "Mr. Morosini: Has it been previously pointed out? If it has, I would like to have that noted, also.

"Mr. Maloney: Yes, it has. That is the second time.

"Mr. Morosini: May I have it stated when, previous to this moment, it was pointed out?

"The Court: Well, I will allow you to cross examine the witness.

By Mr. Maloney:

"Q. Now, I call your attention to an article which, according to Exhibit 55, was entitled 'Balancing the Risks,' and also entitled 'No Economic Threat.' Did you cause that to be printed in the Congressional Record? A. I did.

"Q. Where did you get the copy from? A. I got that from the Congressional Record.

"Q. That had already been printed in the Congressional Record, had it? A. Yes, it had.

"Q. That did not come from Dennett, is that it? A. No.

"Mr. Morosini: May I again have it noted for the record throughout this testimony here the witness is reading from the paper, and counsel for the Government is pointing out that which he wishes read.

623 "The Court: I will instruct the witness not to read it unless by reading it his recollection is refreshed so that he can then testify from his independent recollection.

By Mr. Maloney:

"Q. To get the record straight on that point, can you tell us anything at all about any of these matters from your independent recollection, Mr. Hill? A. All the speeches that I ordered—

"Q. Keep your voice up, please. A. All the speeches that I ordered from the Goveriment Printing Office, except possibly one that appears in the record in my name, have been given by cash or check, the money came from Prescott Dennett.

"Q. And can you tell us the approximate aggregate total of the money which you received in cash from Prescott Dennett to pay you for getting all these speeches reprinted? A. Something like—

"Mr. Morosini: I object to this line of inquiry on the ground it is incompetent, irrelevant and immaterial, and no binding effect on this defendant.

"The Court: Overruled.

"Mr. Morosini: May I have an exception?

"The Court: You may have one.

"The Witness: I received somewhere in the neighborhood of $3,000.

624 By Mr. Mahoney:

"Q. Mow much was that? A. Around $3,000.

"Q. In cash? A. In cash.

"Q. And over what period of time was that? A. Possibly seven or eight months.

"Mr. Morosini: Now, if the Court please, may I renew my objection and ask that this testimony be stricken out? These transactions between this witness and Prescott Dennett have not been tied up or connected up with this defendant in any manner at all. I submit to your Honor that this testimony is prejudicial in any way, that it

624 should be stricken out and the jury instructed to disregard it.

"The Court: The motion is overruled.

"Mr. Morosini: May I have an exception?

"The Court: Yes.

By Mr. Maloney:

"Q. Now, do you recall having an article inserted in the Congressional Record entitled 'Aid to England?' Was that inserted in the Congressional Record by you? A. No, it was not.

"Q. Did you order any reprints of that? A. I did.

"Q. Can you tell us how many thousands you

625 ordered? A. I would have to look to find out. I don't remember just how many.

(Witness consults record.)

"The Witness: 25,000.

By Mr. Maloney:

"Q. How much did you pay for the 25,000? A. $47.55.

"Q. Where did you get that money from? A. Prescott Dennett.

"Q. And do you recall inserting in the Record an ar-

ticle entitled 'Mrs. Lundeen Answers Walter Winchell?' A. I do.

"Q. Where did you get that from? A. From Mr. Dennett.

"Q. From Prescott Dennett? A. Prescott Dennett.

"Q. How many thousand copies of that did you have reprinted? A. I would have to look.

"Mr. Morosini: May I have a continuing objection and exception to this line of testimony?

"The Court: Yes.

625 "The Witness: 25,000.

By Mr. Maloney:

626 "Q. How much did you pay for that? A. $55.22.

"Q. Where did you get that money from? A. Prescott Dennett.

"Q. Now, did you also have inserted in the Record an article entitled 'No Further Without War?' A. I got it from the Record, I didn't have it inserted.

"Q. Under whose remarks was that inserted in the Record? A. By—there was two remarks, I think it was by Senator Nye. There was two speeches taken from the Record, one by Senator Nye and the other by Congressman Sweeney.

"Q. How many thousand copies of those two speeches did you have reprinted? A. 25,000.

"Q. And how much did you pay for them? A. $47.55.

"Q. Where did the money come from? A. Prescott Dennett.

"Q. In cash? A. In cash.

"Q. Now, did you also have inserted in the Record the following articles: (1) You are on your way to war. (2) Stop the march to war. (3) Three steps to war.

627 Did you have those three articles inserted in the Record? A. I didn't have them inserted, I took extracts from the Record.

"Q. They had already been printed in the Record, had they? A. They had already been printed in the Record.

"Q. And at whose suggestion did you pick out those three articles and have reprints made? A. At my own suggestion. No one suggested it.

627 "Mr. Morosini: Pardon me, may I have it again noted for the record the witness is holding one end of the Exhibit and Mr. Maloney the other, and Government's counsel is pointing out that which he wishes the witness to read?

"The Court: The record may so indicate.

"Mr. Maloney: May the record also show that this exhibit has been identified by Mr. Harris as being a correct transcript of his records in the Capitol?

"Mr. Morosini: I fail to see what the point of that is, if the Court please. The matter was admitted in evidence.

"Q. How many thousands of copies did you order? A. 35,000.

628 "Q. How much did you pay for them? A. $109.50.

"Q. Where did you get the money from? A. Prescott Dennett.

"Q. Did you again have occasion to order another reprinting of those particular articles? A. I did.

"Q. What was the date of the next reprinting? A. March 7, 1941.

"Q. How many thousands of copies did you have ordered at that time? A. 25,000.

"Q. How much did you pay for them? A. $86.70.

"Q. Where did you get the money from? A. Prescott Dennett.

"Q. Now, did you also order some postcards? A. I did.

"Q. Franked postcards, printed at the Government Printing Office? A. I did.

"Q. Did you have or cause to be inserted in
628 the Record a certain poem entitled 'Crosses in Flanders?' A. That was inserted in the Record, but I didn't have anything to do with inserting it in the Record.

629 "Q. Under whose Extension of Remarks was that inserted in the Record? A. Through Congressman Sweeney.

"Q. Did you order any reprints of that? A. I did.

"Q How many? A 10,000.

"Q. How much did you pay for the reprints? A. $26.35.

"Q. Where did you get the money from? A. I used my own money on that one.

"Q. Did you also insert in the record or cause to have inserted in the record an article entitled 'Mrs. Roosevelt is mistaken?' A. I am not sure whether I had it inserted in the Record or not, I am not sure of that, I am not positive.

"Q. How many thousand reprints did you order? A. I ordered 28,000—No,—

"Q. Now, wait a minute. Look at this Exhibit 55 and see if you can refresh your memory. A. 50,000.

"Q. 50,000 copies? A. Yes.

"Q. How much did you pay for them? A. $86.15.

630 "Q. Where did the money come from? A. Prescott Dennett.

"Mr. Morosini: Will the record note, if the Court please—I do not like to do this every time, but I would like to have the record show that this testimony the witness is giving is being read from this Exhibit after having had it pointed out.

"By Mr. Maloney:

"Q. Now, did you also cause to be inserted in
630 the Record an article entitled 'Three warnings?'
A. I did.

"Q. Under whose Extension of Remarks was that printed? A. Congressman Dwershak.

"Q. D-w-o-r-s-h-a-k? A. That is right.

"Q. Where did you get the copy of that article from? A. I made it up myself.

"Q. How many thousand copies of it did you order? A. 28,000.

"Q. Where did you get the money from? A. Prescott Dennett.

"Q. Did you also have inserted in the Record an article entitled 'We burned our fingers once?' A. I did.

"Q. How many thousand copies or reprints did
631 you order? A. 30,000.

"Q. Where did you get the money from? A. Prescott Dennett.

"Q. Where did you get the copy for that article from? A. I cannot remember."

* * * * *

The witness **Corneaby** who was called by the Government to testify concerning events in the office of Senator Lundeen while he was Secretary and who testified that he resigned from the office because he did not approve of the relationship between the Senator and Viereck and he denied that he was discharged or forced to resign or that he had ever requested the Senator to place him again on the payroll of the office. With respect thereto the **Witness Lundeen**, the widow of the late Senator Lundeen, identified the signatures of Corneaby to two letters which

were introduced in evidence and read to the jury as follows:

1220 "Mr. Morosini: If the Court please, I would like to read these letters to the jury.

"A letter from Minneapolis, Minnesota, dated 1220 April 8th, 1940, addressed to the Hon. Ernest Lundeen, in Washington, D. C.

'Dear Senator:

'No doubt, by this time, you know about Margie's condition. We have called in two heart specialists—one from Minneapolis and one from Rochester. I have two other doctors here in Minneapolis looking after Margie besides three special nurses on duty full time. Her case now has been diagnosed as being inflammation of the heart lining with about ten or twelve ounces of water in same, along with bronco pneumonia and streptococci in the blood stream. However, I believe that the doctors have the latter two under control, but the heart condition is very serious.

'Now, Ernest, I am writing you because I know you are my friend, and one must look toward their friends in time of trouble.

'Last week my hospital bill was $103.00. The amount was so large because of the X-rays and the laboratory tests they are making.'

"Mr. Morosini: I am omitting some sentences.

"Mr. Maloney: Omit as much as you want, Mr. 1221 Morosini, it is all right with me.

"Mr. Morosini: (Continuing)

'I do not know how long this will continue but I can assure you that it is taking the little money I had saved very rapidly. I am not able to do a single thing except walk around in circles.

'I believe that I have been of great assistance to you in a financial way. I am not taking the time or bother

at this time to check into the matter because I am sure that you will recall that I have assisted you greatly from the very beginning. Even at the time of the passing of Mrs. Lundeen's mother I came to your rescue with financial aid. I do not care to and I know you would not like to have me state it all here in this letter, but, Ernest, I am calling upon yourself for help. You have six dif-
1221 ferent payrolls, and you could place me on any one of them. Even if it is only for $150.00 it would go a long way toward helping me out. I can always show honest work for you in return, looking after something back here. I am not going into this political situation until I know that my daughter is on the road to recovery.

'So please, let me hear from you by return mail as to what you can do for me. It surely will be greatly
1222 appreciated by myself and Helen. If you want the facts of Margie's condition, you may contact Judge Devaney who is stopping at the Mayflower Hotel at the present time, and he will tell you about the whole case.'

"Mr. Morosini: Another letter, dated April 19th—

"Mr. Maloney: Mr. Morosini: there is one last phrase in there—he says 'I can always show honest work for you in return.'

"Mr. Morosini: Do you want me to read the whole thing? I will re-read this portion, yes.

"Mr. Maloney: Just that part.

"Mr. Morosini: I will re-read this portion:

'You have six different payrolls, and you could place me on any one of them. Even if it is only for $150.00 it would go a long way toward helping me out. I can always show honest work for you in return, looking after something back here.'

"A letter dated April 19th, 1940, from Minneapolis, Minnesota, to the Hon. Ernest Lundeen, from Edward Corneaby:

'I am happy to know that you have your payroll filled because, after all, this will help take care of some of our unemployed, and being a labor Senator, that is your first duty.

'Regarding our sixteen day Miami vacation—not three months, as you told Judge Devaney—I was fortunate enough to take my wife and daughter for a two weeks' vacation, and I did not go on Government expense or have someone else pay for my passage.

'I hope in the future when you give out information you will try to be correct. I have not had a vacation on your payroll. This payroll is appropriated by the
1223 people of the United States, and it is your duty to see that each and every place is filled by citizens of the State of Minnesota who are actually rendering service for your constituents.

'I did not think I was actually taking someone off the payroll when I asked you to help me out. I figured I was entitled to it and that I could render service for the State of Minnesota for the amount received. However, if you have the required number of people actually working in your office, I am very happy to know of same.'

"Signed Edward Corneaby."

XIX.

Direction of the Court That Witness Lundeen Produce Certain Papers and Refusal of the Court to Require the Representative of the Secretary of the Treasury to Produce the Papers Which Were in the Possession of That Department.

883-884 The Government introduced evidence through witnesses Spielman and Johnson, former employees of the late Senator Lundeen—over the objections

946- of defendant—that the Senator had in operation
947 in his office a system of "kick-backs" whereby some of his employees paid to the said Senator a
1146 part of their salaries pursuant to an agreement at the time he employed them and which money was used for other purposes of his office. A question
1150- arose as to the income tax account of the late Sena-
1152 tor Lundeen, and three of his former employees prepared and filed statements with the Bureau of Internal Revenue as to the procedure.

Mrs. Norma Ward Lundeen, the widow of the Senator, was on the witness stand where she was questioned about the kickbacks, and the following occurred:

1145 "The Court: Now, will you answer the question?

"The Witness: The amount for salaries allotted to the employees in my husband's office—that is what you are referring to?

"By Mr. Morosini:

"Q. That is right. A. Now, when the people—when my husband employed these girls, he told them—

"Mr. Maloney: (Interrupting) Just a moment, Mrs. Lundeen. May I ask if the witness was there at the time?

"The Court: Did you hear them?

"The Witness: Yes, I have heard them, and I can lead up to that by things that have happened since my husband's death.

"Mr. Maloney: We are not trying to keep you from testifying, Mrs. Lundeen; we want only those things that you know yourself.

"Mr. Morosini: Just a moment. I think we can take care of this situation very well, Mr. Maloney. Just sit down. Now, may I have an answer from this witness, an uninterrupted answer?

"The Court: Tell what you know and not what has been told.

"The Witness: No, this is what I know, that
1146 these employees were hired at a certain specified salary agreeable to them, and understood thoroughly by them when they came into the office that they would receive a certain salary.

"The remainder of that salary allotted by the Government was put in a reserve fund for the office which was used for extra clerk hire, for extra help in the office, for research workers, for anything pertaining to the office and not for personal usage, and the girls in the office knew that and I have signed statements from at least—

"By Mr. Morosini:

"Q. (Interrupting) Just a moment. We will come to that. Have you seen any written statements made by the employees of your husband's office relative to this salary situation? A. Yes, sir.

"Q. And when and where did you see these statements—approximately? A. It was in the late fall of 1940.

"Q. In Washington? A. In Washington.

"Q. By whom were these statements made? A. Phyllis Posivio, now Mrs. Spielman, Ruth Cummings and Marion Gross.

"Q. Can you tell us what those statements contained?

1147 "Mr. Maloney: Just a moment. I must object to this time as not being the best evidence. The statements themselves would be the best evidence.

"By Mr. Morosini:

"Q. Do you have those statements in your possession? A. I have them or I can get them.

"Q. You do not have them under your own control? A. I don't think I have them under my own control, no.

"The Court: She says she has them or can get them.

"Mr. Morosini: We can get them by subpoena, I think, is what the witness means,—perhaps.

"The Court: She says she can get them so I will ask her to bring the statements.

"Mr. Morosini: May I submit that the contents of certain statements, and I believe these identical statements, have already been testified to. I don't know whether I did or not, but I think I made an objection to any testimony relative to them, the statements, not being here, and I submit that we are entitled to follow the same line.

"The Court: The witness indicates that it will be very simple for her to procure them, so you bring them at the next session of court.

"By Mr. Morosini:

"Q. By that do you mean, Mrs. Lundeen—

1148 "Mr. Maloney: (Interrupting) After all, Mr. Morosini, this is your witness.

"The Court: Do not lead her.

"Mr. Morosini: I am not leading her, but I would like to clear up this question.

"By Mr. Morosini:

"Q. Do you have those statements in your own possession?

"The Court: She has said she has them or can get them and she is under instruction to get them.

"The Witness: May I say this, Judge?

"The Court: I don't think it is necessary to pursue it. You get them the next time you come to court.

"By Mr. Morosini:

"Q. Can you bring these statements with you? A. I cannot—

"The Court: (Interrupting) She has said that she can.

"The Witness: Well, may I alter that?

"The Court: No.

"Mr. Morosini: Just one moment, if the Court please. I think we are entitled to this.

"The Court: The Court has directed her to bring them the next time she comes to court. Now, proceed.

"Mr. Morosini: Your Honor can direct her to
1149 bring them, but if she hasn't got them in her possession or under her control, she cannot very well bring them. That is what I am trying to show."

* * * * *

A subpoena was served on the Secretary of the Treasury or such representative as he should designate, at the instance of the defendant, to come and bring the statements filed by the three former employees of the late Senator Lundeen. The witness **Neal** appeared and when asked if he had brought these statements, the following took place:

1192 "Q. You were subpoenaed to bring certain records to court today, is that correct? A. That is right.

"Q. Have you brought those records with you? A. I have not.

"Q. You have not? A. I have a letter here from the —signed by the Assistant Secretary of the Treasury forbidding me to bring the records.

"The Court: May I see that, please?

"The Witness: Yes, sir. (Handing document to the Court.)

"The Court: Did you see the paper?

"Mr. Morosini: No, I have not. (Handing document to counsel.)

1193 "Mr. Maloney: Has the Court seen the copy of the regulation in question, sir?

"The Court: Yes.

1194 "Mr. Morosini: Well, if the Court please, all this is very, very interesting, but I still think we are entitled to those records.

"We have subpoenaed particularly—the only thing we are interested in from this witness or from the Department of Internal Revenue—are those three letters to which Mrs. Lundeen has referred the other day, signed by Phyllis Posivio, Ruth Cummings and Miss Gross, and filed with the Income Tax Department. She testified that she had them, that they were prepared and signed whether at her instruction or at the instruction of Mr. Neal. I don't see anything in this letter or these regulations which prohibit their production.

"The Court: This is a letter from the Acting Secretary of the Treasury addressed to the witness, Mr. Neal, instructing him to respond to the subpoena *duces tecum*, but declines to produce the records asked for upon the ground that to do so would disclose confidential matter and would be inimical to the public interest. That letter seems to be based upon a regulation designated as Department Circular 591, issued in the year 1938.

"Mr. Morosini: Those regulations are very broad and general, if the Court please. My eye just caught one there that the Secretary has in his discretion to make available anything. Certainly if it is purely a matter of

1195 discretion, there cannot be any question of the public good involved there, when we need them on this trial. They have been referred to in the course of the testimony, and they have been subpoenaed.

"The Court: If to require him to produce them discloses matter which would be inimical to the public interest, he would be in abuse of his discretion if he permitted them to be used

"I must recognize the request of the Secretary and if either side wishes the record more complete—

"Mr. Morosini: I would like to have both the regulation and the letter and the subpoena made a part of the record.

"Mr. Maloney: There is no objection to them going into evidence, if Defendant's counsel requires it.

"Mr. Morosini: All right. Let us put them in evidence.

"The Court: They may be received in evidence.

(Defendant's Exhibits 32, 32-A, 32-B, and 32-C are marked in evidence.)

"By Mr. Morosini:

"Q. I understand, Mr. Neal, that pursuant to instructions, you will not give any testimony and will not produce any of the records called for, is that right? A. That is right.

"Mr. Morosini: There is nothing further we can do, Mr. Neal.

1196 "That is all."

• • • •

Assignments of Errors.

1. The Court erred in failing to hold that the Act of June 8, 1938, 52 Stat. 631, as amended by the Act of August 7, 1939, 33 Stat., 1244-1246 (Chap. 521) is unconstitutional, particularly Sections 3 and 5 thereof requiring the filing of supplemental registration statements and the penal provisions, being in violation of the Fifth and Sixth Amendments to the Constitution of the United States and depriving the appellant of due process of law because said Sections of the said Act as amended are indefinite and uncertain, fix no standard of guilt, and are so vague

that men of reasonable intelligence must differ as to their meaning.

2. The Court erred in failing to hold that, the supplemental registration statement form, particularly requirement or paragraph 11 thereof, issued by the Secretary of State for the alleged purpose of carrying out the Act of June 8, 1938, as amended by the Act of August 7, 1939, and purporting to comply with Sections 3 and 6 of said Act as amended and which all registrants were required to use in filing supplemental statements, exceeded the power and authority conferred on the Secretary of State by said Act as amended and violated the Fifth and Sixth Amendments to the Constitution of the United States because the said supplemental registration forms deprived the appellant of due process in being indefinite and uncertain, failing to fix any standard of guilt, and being so vague that men of reasonable intelligence must differ as to their meaning.

3. The Court erred in failing to hold as a matter of law that the supplemental registration forms issued by the Secretary of State and required to be used by the appellant in filing his three supplemental registrations, particularly requirement or paragraph 11 of the said forms, which are each, respectively, the subject matter of Counts 2, 3, and 5 of the indictment, were in excess of the power and authority conferred on the said Secretary of State by the said Act of June 8, 1938, as amended by the Act of August 7, 1939, and therefore valid.

4. The Court erred in failing to hold as a matter of law that the Constitutional rights of the appellant had been violated.

5. The Court erred in failing to hold as a matter of law that the demurrer should be sustained as to Counts 2, 3 and 5 of the indictment relating to supplemental registration statements required to be filed with the Secre-

tary of State pursuant by Section 3 of the Act of June 8, 1938, as amended by the Act of August 7, 1939.

6. The Court erred as a matter of law in denying the motion to dismiss submitted at the commencement of the trial and renewed at the close of all evidence in the case.

7. The Court erred in not dismissing Counts 2, 3 and 5 of the indictment and in not sustaining the demurrer to said Counts of the indictment insofar as said Counts relate to supplemental registration statements filed by the appellant with the Secretary of State under Section 3 of the Act of June 8, 1938, as amended by the Act of August 7, 1939, as agent of the Munchner Neueste Nachrichten (the Munich newspaper) because the initial and the said supplemental registration statements attached as exhibits to the indictment show on their face that appellant was not to disseminate propaganda in the United States for said foreign principal or to do any other act in the United States for the said foreign principal except to send it newspaper and other clippings and articles written by the appellant for publication in Germany, which activity was the performance of only a private, non-political, financial and mercantile activity in furtherance of the bona fide trade or commerce of the said newspaper in Germany and as such, exempt from registration.

8. The Court erred in not dismissing Counts 2, 3 and 5 of the indictment as to the supplemental registration statements of appellant as an agent of the German Library of Information and of Wirsing, respectively, for the reason that the said Counts of the indictment so mixed up the alleged activities of the appellant as agent for the German Library of Information and as agent for Wirsing, as to which he had to register as agent for foreign principals, with his alleged activities as agent for the Munchner Neueste Nachrichten, as to which he was exempt from

registration, that the appellant was not informed of the nature and cause of the accusation, and thus violated his rights under the Sixth Amendment to the Constitution of the United States.

9. The Court erred in denying the motion of appellant for a bill of particulars.

10. The Court erred as a matter of law in holding that the applicable regulations issued by the Secretary of State, particularly the paragraphs thereof relating to the preparation and filing of supplemental registration statements, were not in excess of the power and authority conferred on the said Secretary of State by the said Act of June 8, 1938, as amended by the Act of August 7, 1939, and therefore valid.

11. The Court erred in the denial of the motion of appellant for either a change of venue or for delay in the trial by reason of prejudice and hostility against the appellant as set forth in said motion papers.

12. The Court erred in permitting Government counsel to refer to and characterize appellant as a propagandist and his activities as propaganda activities.

13. The Court erred in depriving the appellant of the assistance of his chief trial counsel, Mr. Morosini, at the close of all evidence because such action of the court was in violation of the rights of the appellant under the Sixth Amendment to the Constitution of the United States.

14. The Court erred as a matter of law in his general charge to the jury concerning the legislative history of the Act of June 8, 1938, as amended by the Act of August 7, 1939, including the statement that said Act as amended was "designed to accomplish the ends and aims of the McCormack Committee," that said Committee of the Congress was created in 1934, submitted a report on February 13, 1935, to the House of Representatives, and that

the said Act as amended "was designed to remedy some of the ills which the Committee had reported."

15. The Court erred as a matter of law in his general charge to the jury that the legislative history of the said Act of June 8, 1938, as amended by the Act of August 7, 1939, shows that Congress intended that "All persons who are in the United States for political propaganda purposes; aliens coming to or in the United States for propaganda purposes of a political nature; American citizens who accept foreign political propaganda employment" shall register with the State Department and supply information about their political propaganda activities.

16. The Court erred as a matter of law in charging the jury as to the intent and purpose of the Act of June 8, 1938, as amended by the Act of August 7, 1939, on bases other than found within the four corners of the said Act.

17. The Court erred in approving and giving to the jury as instructions the Government's prayers Nos. 2, 2A and 8.

18. The Court erred in refusing to approve and give to the jury as an instruction the appellant's prayer No. 19.

19. The Court erred in overruling the objections of appellant to the admission in evidence before the jury of a book written by appellant and published in 1930 under the title "Spreading Germs of Hate" and in permitting Government counsel over objections of appellant to read extracts therefrom to the jury at intervals selected by him during his examination of witnesses and in his closing argument to the jury.

20. The Court erred in admitting over objections of appellant testimony relative to a book entitled "100 Families that Rule the Empire," published by Flanders Hall, Inc.; it appearing that appellant registered as the agent of a foreign principal for the publication of said book, and

no violation of that registration was charged in the indictment.

21. The Court erred in denying proper cross examination of witness Nadya Gardner.

22. The Court erred in directing witness Mrs. Ernest Lundeen to produce certain papers not in her possession and in sustaining the refusal of the Treasury Department to produce said papers in its possession in response to a subpoena *ducus tecum* issued on behalf of appellant.

23. The Court erred in refusing to permit proper questions directed by appellant to witness Price on his direct examination in an attempt to elicit from him the facts concerning his preparation of the supplemental registration forms issued by the Secretary of State and particularly the source from which he obtained the statement or requirement No. 11 in said form that the registrant "Give a comprehensive statement of the nature of the business of the registrant."

24. The Court erred in refusing to direct witness Adams of the State Department to produce in response to a subpoena *ducus tecum* registration statements and supplemental registration statements filed by other registrants, and in denying the offer of proof by appellant that approximately 500 out of a total of approximately 560 registration statements and supplemental registration statements filed by other registrants with the Secretary of State answered the questions on the registration forms in precisely the same manner as did this defendant.

25. The Court erred in refusing to permit Joseph F. Guffey, United States Senator from the State of Pennsylvania, to testify as to the practice in his office of inserting material in the Congressional Record, purchasing reprints, and mailing same under his official frank.

26. The Court erred in rejecting an offer of proof by appellant that Senator Guffey inserted in the Congressional Record an interventionist speech by Mr. Bullitt on or about August 18, 1940; that Senator Guffey ordered 1,000,000 reprints of that speech and 1,000,000 franked envelopes in which to mail them; that the reprints and envelopes were paid for by The Council of Democracy; and that 984,000 copies of the speech were distributed without the necessity of addressing the envelopes because the Post Office Department placed them in individual mail boxes.

27. The Court erred in refusing to admit on behalf of appellant evidence from the Government Printing Office relative to reprints of addresses and other material from the Congressional Record ordered by various members of the Senate and House of Representatives for mailing in franked envelopes.

28. The Court erred in refusing to permit in evidence before the jury a report by the Dies Committee of the House of Representatives for the purpose of impeaching the witness Spielman.

29. The Court erred in permitting Government counsel, over objections of appellant, to introduce in evidence the book "Lord Lothian v. Lord Lothian" and several other books published by Flanders Hall, Inc., it not having been shown that appellant was the agent of any foreign principal in connection with the publication of such books or any of them.

30. The Court erred in permitting Government counsel, over objections of appellant, to introduce in evidence copies of certain speeches and other material reprinted from the Congressional Record and which were mailed under the franks of certain members of Congress by witness Hill, it not having been shown that appellant was the agent of any foreign principal in that connection.

31. The Court erred in permitting Government counsel over objections of appellant, to place in evidence a reprint from the Congressional Record of an address by Senator Lundeen entitled "Six Men and War," it not being shown that appellant was the agent of any foreign principal in connection with any assistance he may have rendered Senator Lundeen in the preparation of said address.

32. The Court erred in permitting Government counsel, over objections of appellant, to introduce any evidence concerning any activity of appellant, to introduce any evidence concerning any activity of appellant with respect to Flanders Hall, Inc., or its publications, or with respect to any address of any member of Congress or any reprint from the Congressional Record without establishing by relevant, material and competent evidence that appellant was the agent of a foreign principal in connection therewith.

33. The Court erred in permitting any evidence, over objections of appellant, concerning any activity of appellant with respect to any allegation of the indictment without its being established by material, competent and relevant evidence that such activity was the nature of the business of the appellant and that it was conducted by appellant as the agent of a foreign principal.

34. The Court erred in not declaring a mistrial because of the misconduct of Prosecutor William Power Maloney in:

(a) His opening remarks to the jury;

(b) His audible asides and remarks in the presence of the jury while appellant's counsel were conducting the examination and cross examination of witnesses;

(c) His bringing into the trial room before the jury mail sacks said to contain copies of re-

prints from the Congressional Record when appellant had requested copies of the few reprints introduced in evidence by the Government and when the Court had expressly directed Mr. Maloney not to bring the mail sacks before the jury.

(d) His improper examination of witnesses by leading questions;

(e) His improper examination of Congressman Hamilton Fish;

(f) His inflammatory and emotional closing argument to the jury.

35. The Court erred in refusing to grant appellant's motion for a directed verdict.

36. The Court erred in admitting testimony over the objections of appellant respecting matters not contained in the indictment and which testimony tended to create an atmosphere prejudicial to the appellant.

37. The Court erred in admitting testimony concerning the so-called Holt manuscript.

38. The Court erred in admitting over objections of appellant secondary evidence concerning alleged letters passing between witness Hill and appellant which witness Hill admitted he had destroyed. Also, in admitting over objections of appellant improper secondary evidence by the witnesses Webber and by the witness Johnson.

O. R. McGUIRE,
Attorney for Appellant.

Service of copy of the foregoing Assignment of Errors is acknowledged this 30th day of March, 1942.

WILLIAM POWER MALONEY,
Special Assistant to the Attorney General of the United States.

XX.

Docket Entries.

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA.

CRIMINAL COURT

Parties:	Charge:
No. 68584 UNITED STATES vs. GEORGE SYLVESTER VIERECK	Vio. Act of June 8, 1938 and as amended by act of Aug. 7, 1939 (22 U. S. C. Sec. 233, Secs. A to G, Incl.) G. J. No. Orig. (G. J. 14777)

Attorneys For Prosecution:

Attorneys For Defendant: Daniel F. Cohalan, Emil Morosini.

Date		*Proceedings*
1941		
Oct.	8	Presentment and indictment Filed.
"	10	Recog. $15000 taken with U. S. Fidelity & Guaranty Co., surety.
	10	Arraigned, Plea Not Guilty (2 weeks, etc.). Appearance of Daniel F. Cohalan and Emil Morosini entered.
	11	Recog. $15000 taken with U. S. Fidelity and Guaranty Co., surety for appearance before U. S. District Court for District of Columbia filed.
	24	Plea "Not Guilty" withdrawn. Demurrer to indictment filed.
Nov.	3	Memorandum of law in support of defendant's demurrer filed.
		Demurrer to the indictment is argued and sustained as to the 1st and 4th cts. and overruled as to the 2nd, 3rd & 5th cts.

Date	Proceedings
Nov. 10	Arraigned. Plea Not Guilty to counts two, three and five. Trial set for Jan. 12, 1942.
Nov. 3	Order sustaining demurrer to counts 1 and 4 of the indictment and denying the demurrer to the remaining counts of the indictment filed (Goldsborough, J.).
24	Letter appointing Albert E. Arent as special attorney to represent the U. S. in this case filed. Oath of same filed.
Dec. 22	Petition and motion to suppress evidence and for the return of same to deft. filed.
1942	
Jan. 7	Motion for a Bill of Particulars filed.
19	Affidavit of Personal Bias and Prejudice of Justice T. Alan Goldsborough filed by the Attorney General of the U. S. Oral motion predicated upon said affidavit is by the Court denied.
19	Motion for better Bill of Particulars argued and overruled. Exc.
19	Petition to suppress evidence and return of property argued and overruled. Exc.
20	Affidavit of Personal Bias and Prejudice of Judge T. Alan Goldsborough is withdrawn by the Attorney General of the U. S.
1942	
Jan. 22	Motion for Re-Argument of deft's motion to suppress evidence and for the return of same and affidavits of George Sylvester Viereck and Margaret E. Viereck in support thereof filed.
22	Motion for Re-Argument of deft's. motion to suppress evidence and for the return of same is granted.
22	Memorandum of Points & Authorities in support of motion to suppress evidence is filed.

Date	Proceedings
Jan. 22	Motion for change of Venue and other Relief filed.
22	Motion to suppress evidence and motion for change of venue are set for hearing on Jan. 29, 1942 at 10 A. M.
29	Points and Authorities of Government in opposition to deft's. motion for change of venue filed.
29	Motion of deft. to require Justice Letts to disqualify himself to act in this case filed.
29	Motion for re-argument of deft's motion to suppress evidence and for return of same withdrawn.

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA.

CRIMINAL COURT

Parties:
No. 68584 UNITED STATES
vs.
GEORGE SYLVESTER VIERECK

Attorneys For Prosecution:
Attorneys For Defendant: Emil Morosini, Jr., Daniel F. Cohalan, Jr., O. R. McGuire.

Date	Proceedings
1942	
Jan. 29	Motion to deft. to require Justice Letts to disqualify himself in this case is argued and overruled. Exc. noted.
29	Motion of deft. for change of venue argued and submitted.

Date	Proceedings
Jan. 29	Points and Authorities of Government in opposition to deft's. motion to suppress evidence and return evidence filed.
Feb. 16	Jurors from Crim. Nos. 3 and 2 sworn on *voir dire*.
	Empaneling of jury begun and continued until tomorrow.
	Motion for change of venue and for other relief to restrain Mr. Wm. Maloney from holding press conferences heretofore argued and submitted, is overruled. Exc.
	Motion for change of venue and for other relief re-argued and overruled. Exc.
	Oral motion to dismiss indictment argued and overruled. Exc.
Feb. 13	Petition to commit Prescott Dennett witness on behalf of the U. S. filed. Order committing Prescott Dennett U. S. Witness filed. (Letts, J.) Recog. $1500 taken with Isaac B. Jones, surety.
17	Empaneling of jury continued. Jurors from Crim. No. One sworn on *voir dire*.
	Jury sworn. It appearing to the Court that the trial of this case is likely to be a protracted one, the Court directs the calling of two alternate jurors; two additional jurors are called and George M. Wright and John M. Krauss are sworn as alternate jurors; case respited until tomorrow.
18	Trial resumed, same jury; respited until tomorrow.
19	Trial resumed, same jury; respited until tomorrow. Prescott Dennet, U. S.
	Witness surrendered by Isaac B. Jones, surety. Surety exonerated. U. S. Witness committed to

Date	Proceedings
	W. A. & Jail. Bond for U. S. Witness fixed by Court at $3500.00.
Feb. 20	Trial resumed, same jury; respited until Tuesday, Feb. 24, 1942.
24	Trial resumed, same jury; respited until tomorrow.
25	Trial resumed, same jury; respited until Monday, March 2, 1942.
Mar. 2	Trial resumed, same jury; respited until tomorrow.
3	Trial resumed, same jury; respited until tomorrow.
4	Trial resumed, same jury; respited until tomorrow.
5	Trial resumed, same jury; alternate jurors excused; verdict guilty as indicted on counts 2, 3 & 5. Jury polled; Deft. committed.
13	Sentenced to Pen. For period of 8 mos. to 2 yrs. on 2nd count; 8 mos. to 2 yrs. on 3rd count to take effect at the expiration of 2nd count; 8 mos. to 2 yrs. on 5th count, to take effect at the expiration of 3rd count; and pay a fine of $500 on each count and costs of this trial. Fines and costs stayed pending appeal (Letts, J.).
Mar. 13	Motion for bail pending appeal filed and denied. Notice of Appeal filed, $5.00 Clerk's fee paid. Motion to withdraw appearance of Edward J. Hickey filed and granted. (Letts, J.) Copy of letter notifying the Court of the filing of Notice of Appeal filed.
" 31	Bill of Exceptions including Gov'ts. Exhibit #12 and certified copies of Deft's. Exhibits Nos. 51, 52, 53, 54, 57, 58, 60, 61, 62, 63, 64, 65, 66, 67, 68,

Date	Proceedings
	69, 70, 72, 73, 74, 75, 77, 78, 80, 81, 82, 83, 84, 85, & 86, and copy submitted, signed, made of record and filed.
	Designation of record filed. Assignment of errors filed. Letter of O. R. McGuire, Atty. for Deft. certifying as to accuracy of transcript of testimony filed.
Apr. 1	Order directing Clerk to send certain exhibits to U. S. Court of Appeals for D. C. filed. (Letts, J.)
9	Supplemental Designation of Record filed. (Letts J.)
13	Record on appeal delivered to Atty. O. R. McGuire $30.85 paid and credited.

XXI.

Judgment and Commitment.

DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA DIVISION.

UNITED STATES vs. GEORGE SYLVESTER VIERECK	No. 28584 Criminal Indictment in five counts for violation of U. S. C., Title 22, Sec. 233, a to g incl., Act of June 8, 1938 and as amended by Act of August 7, 1939.

On this 13th day of March, 1942, came the United States Attorney, and the defendant George Sylvester Viereck appearing in proper person, and by counsel, Messrs. Daniel F. Cohalan, Jr. and O. R. McGuire, Sr.

[2] ..... and,

The defendant having been convicted on[3] a verdict of guilty of the offense charged in the[1] indictment in the above-

1 Indictment or information. 2 Insert (a) "by counsel" or (b) "having been advised of his constitutional right to counsel and having been asked whether he desired counsel assigned by the Court, replied that he did not," whichever is applicable. 3 Insert the words "his plea of guilty," "plea of nolo

entitled cause, to wit[4] Counts 2, 3 and 5: Vio. Act of June 8, 1938 and as amended by Act of August 7, 1939 (22 U. S. C., Sec. 233, a to g inclusive.) and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS BY THE COURT

ORDERED AND ADJUDGED that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the [5]Penitentiary type to be designated by the Attorney General or his authorized representative for the period of[6] Eight (8) months to Two (2) years on the second count of the indictment; Eight (8) months to Two (2) years on the third count of the indictment, said sentence to run consecutively with the sentence imposed on second count of the indictment; and Eight (8) months to Two (2) years on the nfth count of the indictment, said sentence to run consecutively with sentence imposed on the third count of the indictment; and pay a fine of Five Hundred ($500.00) Dollars on each of the second, third and fifth counts of the indictment; and pay the costs of this trial and that said defendant be further imprisoned until payment of said fine, or fine and costs, or until said defendant is otherwise discharged as provided by law.[7]

IT IS FURTHER ORDERED that[8] execution on the above judgment for the collection of the fines imposed and the costs therein taxed against the defendant, is stayed

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contendere," or "verdict of guilty," as the case may be. 4 Name specific offense or offenses and specify counts upon which convicted. 5 Insert type of institution such as "jail," "training school," "reformatory," "penitentiary," or "special." If prisoner's circumstances require special type institution, Marshal should submit facts and recommendations of Court to Attorney General where regulations do not apply. 6 Insert sentence and any provision for payment of fine and state whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin; that is, with reference to termination of preceding term, or with respect to any other outstanding or unserved sentence. 7 Strike out if Court did not so order. 8 Indicate any

pending disposition of any appeal which may be taken to the Court of Appeals for the District of Columbia.

IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.[9]

(Signed) F. DICKINSON LETTS,
(SEAL) *United States District Judge.*

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order with respect to suspension and probation. [9] Certified copy to accompany defendant to institution.

[fol. 319] Monday, June 1st, A. D. 1942.

No. 8204

GEORGE SYLVESTER VIERECK, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

The argument in the above entitled cause was commenced by Mr. O. R. McGuire, attorney for appellant, continued by Mr. Wendell Berge, attorney for appellee, and concluded by Mr. O. R. McGuire, attorney for appellant.

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UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 8204

GEORGE SYLVESTER VIERECK, APPELLANT,

v.

UNITED STATES OF AMERICA.

Appeal from the District Court of the United States for the District of Columbia

Decided September 21, 1942

Mr. O. R. McGuire for appellant.

Assistant Attorney General Berge, with whom *Messrs. William Power Maloney*, Special Assistant to the Attorney General, and *Oscar A. Provost* and *Andrew F. Oehmann*, Department of Justice, were on the brief, for appellee.

Before GRONER, Chief Justice, and MILLER and VINSON, Associate Justices.

VINSON, *Associate Justice:*

Statement of the Case.

Congress passed a law on June 8, 1938, requiring "political" agents of foreign principals to register with the State Department.[1] It was further required by this Act and the 1939 amendment that these registrations be kept up to date with supplemental statements every six months.[2]

Appellant (defendant) registered and also made supplementary statements. The charge against him is that in three of the supplemental registrations he willfully omitted to state facts made material by the Act, the regulations and appropriate forms of the State Department. The willful omission of a material fact is made a crime under Section 5 of the Act.[3]

A jury has found defendant guilty after a relatively long trial. Defendant alleges many errors, none of which is assigned to the general sufficiency of the evidence, and none could be. Defendant argues, however, that he was indicted for one crime and tried for another, neither of which was a violation of the Act. Defendant further argues that in response to Item 11 of a State Department form requesting the nature of his business, his answer that he was an author and journalist, and only that, was correct. It is argued that the Act is too indefi-

[1] 52 Stat. 631-3, 22 U. S. C. A. §§ 611 *et seq.*

[2] 52 Stat. 632, as amended in 1939, 53 Stat. 1244, 1245, 22 U. S. C. A. § 613. The 1938 Act required a supplemental statement in six months. The 1939 Act required a supplemental statement every six months.

[3] 52 Stat. 633, 22 U. S. C. A. § 615.

nite for a penal statute. Issue is taken with a number of the Court's instructions, with the admission of certain evidence, and with the exclusion of other. Also it is said that the Court refused to require production of evidence on defendant's behalf. Other errors alleged are the exclusion of one of defendant's trial counsel and misconduct on the part of the prosecutor. The last error relied upon is that costs could not be imposed.

At the outset, it is clear that the Act[4] requires the registration of "political" agents of foreign principals.[5] Roughly, the test to determine if one is subject to the Act is whether he is engaged in political activities as distinguished from nonpolitical ones; hence, the term "political" will often be used as a shorthand expression. It is also clear that the Act and regulations require the revelation of the details of the agreements with, and activities under, this political foreign principal-agent relationship.[6]

The Main Question.

Against these clear requirements stands the biggest question of this case, do the Act and the authorized regulations issued thereunder require, *in addition to* the revelation of his political activities *under the contract with, or in behalf of, the foreign principal*, the disclosure in some detail of *all other political activities* of the registrant, at least when these political activities are regular enough to be called a part of his business.

The jury was instructed in this case that the proper construction of the Act, regulations and forms require the registrant in his supplementary statements to reveal *all* of his "political" activities for the previous six months *whether or not* the activities were *as agent* for the foreign principal. The discussion of the main question will necessarily cover not only this defendant's objections to the instructions given, but also much of his argument that he was indicted for one crime, and tried for another, and neither of which constituted a violation of the Statute.

Synopsis of the Act.

The Statute is entitled, "An Act to Require the Registration of Certain Persons Employed by Agencies to Disseminate Propaganda in the United States and for Other Purposes." Section 1 of the Act defines, *inter alia*, "foreign principal", and "agent of a foreign principal". "Foreign principal" includes (a) the government, a political party, or a business, of a foreign country, (b) any person domiciled abroad, and (c) any domestic organization partly subsidized by any of the foregoing foreign principals. An "agent of a foreign principal" is any person who acts as a public-relations counsel, a publicity man, a servant, a representative, or an attorney for a foreign principal, and any person who receives pay from, or is under the direction of, a foreign principal is included. There are five exceptions. The first

[4] We are concerned with the 1938 Act as amended in 1939. 52 Stat. 631, 53 Stat. 1244, 22 U. S. C. A. §§ 611 *et seq.* The 1942 Act now in effect on similar subject matter has some significant differences. Pub. L. No. 532, 77th Cong., 2d Sess., c. 263 [S. 2399] (April 29, 1942).

[5] Section 1, as amended, and Section 2.

[6] Section 1, as amended, Section 2, Section 3, as amended, and Items 12-15 of the form.

three exclude from the agent definition duly accredited diplomats and all foreign officials or employees who are of record at the State Department. The fourth excludes from the agents with whom the Act is concerned persons who are performing only private, nonpolitical, financial activities in furtherance of bona fide trade or commerce. The fifth exception is similar, excluding persons engaged only in bona fide religious, scholastic, academic, scientific, or fine arts activities.

Section 2 of the Act requires every person who is or becomes an agent to register on a form prescribed by the Secretary of State. This form is to set forth (a) name and address of registrant; (b) name of foreign principal; (c) a copy of the contract, if written, or a full statement of terms and conditions, if oral; (d) the date of the contract, the date performance starts, and the duration of the contract; (e) the method and amount of payments; (f) the name of every person contributing to the compensation; (g) if the registrant is an organization, the instruments relating to its powers, structure, and purposes.

Section 3 of the Act deals with the supplemental registration statements with which we are particularly concerned in this case. These must be made every six months and shall set forth (a) such facts as make the information under Section 2 current and accurate; (b) the amount and form of the compensation now received; and (c) "a statement containing such *details* required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period."[7] [Italics supplied]

Section 4 provides for the retention of the statements by the State Department, their availability to and withdrawal from the public. Section 5 is the penal provision; its essence for this case has already been mentioned. Section 6 has the common delegation to an administrative body allowing the Secretary to prescribe such rules, regulations, and forms as may be necessary to carry out the Act. Section 7 states the effective date of the Act.

Synopsis of the Regulations.

The pertinent regulations promulgated by the Secretary follow the outline of the Act. The definitions of terms for the most part are fuller; additional terms such as "government of a foreign country", "public-relations counsel", "nonpolitical activities in furtherance of bona fide trade or commerce", are defined. These definitions further emphasize the delineation between political and nonpolitical. The former may have a foreign slant or a chance of a foreign slant. The latter is the ordinary financial trade and commerce. Under this statutory law the State Department and the people want to know all about the former and are not interested in the latter.

The regulations proceed to state that every person required to register either originally or supplementarily shall fill in the appropriate form prepared by the Secretary of State. The 19 items of the two forms are the same except for the one instance which will be noted. The first six items deal with name, addresses, and status (*e.g.*, individual, corporation) of the registrant. Items 7 to 9 ask the name, address, and nationality of the foreign principal. Item 10 reads, "Nature of business of foreign principal". Item 11, "Comprehensive statement of nature of business of registrant". Item 12, "Identifica-

[7] 53 Stat. 1246, 22 U. S. C. A. § 613.

tion of all contracts of employment or other documents submitted herewith to indicate in complete detail the nature of the employment of registrant, and the terms and conditions thereof. If contract is oral, a full statement of the terms and conditions thereof must be submitted herewith and identified herein." Items 13 to 15 deal with the date and duration of the contract, the compensation promised, and the source of pay on the original registration or the pay actually received during the preceding six months on the supplemental statement. Item 16 concerns articles of incorporation and the like, not applicable to an individual. Item 17 asks the nationality of the registrant. Item 18 is the official designation of the registrant, and Item 19 is the date of the statement.

Then the regulations proceed to point out that all questions must be answered. Where there is not sufficient space, supplementary papers should be incorporated by reference.

Paragraph (5) of Chapter IV of the regulations contains this warning: "Acceptance by the Secretary of a registration statement submitted for filing shall not necessarily signify a full compliance with the act on the part of the registrant, and such acceptance shall not preclude prosecution as provided for in the act for a false statement of a material fact or the willful omission of a material fact required to be stated therein."

Paragraph (12) of the same chapter is particularly pertinent in this case. "Agents of foreign principals who engage, whether or not on behalf of their foreign principal, in activities not included among the exceptions set forth in the act and regulations shall be considered subject to the requirement of registration."[8]

The Secretary's Power under the Act to Require the Disclosure of ALL Political Activities.

A registrant's activities might be of four kinds: (1) political activities pursuant to his agency relationship with a foreign principal, (2) his political activities on his own behalf, not a part of the foreign agency, (3) nonpolitical activities in connection with a foreign agency, and (4) nonpolitical activities on his own, not a part of any foreign agency. Work in the first category is the kind that makes it necessary for a person to register, and, of course, when he registers he must make a full disclosure of all activities that fall within this category. In this case we are not concerned to what extent, if any, a registrant must reveal his activities in the last two categories. The question in this case is whether the registrant must make a full disclosure of activities within the second category.

The Title reveals that the Statute is for the purpose of registering persons employed by agencies to disseminate propaganda, and for other purposes.[9] A reading of the Act shows that one of those purposes is disclosure. When the concern is with disclosure of propaganda, a measure would be a half-way one if it did not require one to reveal the propaganda he puts out on his own as well as the propa-

[8] Compare paragraph (17): "Activities connected in any way with the establishment or conduct of a foreign government shall not be considered to fall within any of the exceptions . . . . and persons undertaking to engage in such activities shall be considered subject to the requirement of registration."

[9] See CRAWFORD, STATUTORY CONSTRUCTION (1940) §§ 87, 206, and United States v. American Trucking Associations, Inc., 310 U. S. 534, 542-4.

ganda he puts out as an agent. Otherwise it could not be known in which of his dual capacities a registrant was acting. It seems that the Act in its broad structure has taken this logical policy into account.

The specific provisions of the Act carry out the compass indicated by the Title. Section 2 says that the form shall set forth certain things. The emphasis here seems to be on the terms and conditions of the contract, written or oral, with the foreign principal, and upon the amount, source, and form of the agent's pay.

Section 3, dealing with the supplemental registration (upon which this indictment is based) provides that the material under Section 2 is to be kept current and accurate, the compensation actually paid is to be stated, and by subsection (c) there shall be "A statement containing such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period."[10] Clearly, this authorizes the Secretary to set the degree of generality or specificity of the disclosure of the registrant's business and activities.

There might be some question as to whether in this provision the phrase, "as agent of a foreign principal," designates the type of activities or the class of persons. Defendant's arguments, based on the Act, did not raise the issue and as a result the Government's construction did not develop this possible point. As the 1938 Act is printed there is more difficulty of construction because such person[s] is in the plural.[11]

If "as agent" designates the activities, *i.e.*, a statement of the agent-activities, it would have been better for "agent" to be in proximity with "activities". If "as agent" designates the class of persons, then it is somewhat redundant for it is abundantly clear who "such persons" are, and grammatically it might have been well to introduce "agent[s] of a foreign principal" with "who are".

Since in the 1939 amendment "person" is in the singular as is "agent", and since it seems a better construction of language to have "as agent" designate the class of person rather than the type of activities, we interpret the provision as follows: a statement of the activities of such person (an agent of a foreign principal) during such six months' period. This means that the phraseology is a little tautological, but we assume that is the result of seeking clarity, and in our view the redundancy being slight, a strained construction to avoid it is not justified. Thus we conclude that subsection 3(c) authorizes the Secretary to require a statement of all the activities (at least the political kind with which we are concerned) of a registrant.

Sections 3 and 2 are not the only parts of the Act, however, which authorize the Secretary to call for material. Section 6 provides that the Secretary is authorized and directed to prescribe such rules, regulations, and forms as may be necessary to carry out the Act. In view of the logical necessity of knowing all of an agent's political activities either as an agent or on his own and in view of the fact that "carry out" must mean "make workable", it appears that the Act authorizes the Secretary to require the full disclosure. Some such implementation of statutes is common and desirable.

It is of interest to note that this authorization is running to the Secretary of State. The President, the Head of our Executive Branch,

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[10] 53 Stat. 1246, 22 U. S. C. A. § 613.

[11] 52 Stat. 632.

has the main power over foreign affairs. The Department of State is the cabinet branch through which the Executive works in problems of foreign affairs. This Act deals with agents who disseminate propaganda for foreign principals. While the registrant may be a citizen of this country, he may put himself under the Executive's power over foreign affairs when he acknowledges that he is a paid political agent of a foreign principal. Thus one can read a little more liberally the Act's authorization to the Secretary to do that which will make the statute work,[12] and a full disclosure of all political activities of an agent as agent or as his own is a *sine qua non* for feasibility. An object of the Act must be to know from all that is going on around the country that which may be subsidized by principals outside of the country. The foreign purse can have a lot to do with the convictions expressed under the smoke-screen of free speech.

The Secretary Has Exercised His Power to Require Disclosure of ALL Political Activities.

We conclude then that the Secretary has the power to require a full disclosure of all political activities of a registrant. Our next question is whether that power has been exercised.

A fair interpretation of paragraph (12) of Chapter IV of the Regulations would be that it had been expressly discussed. "Agents of foreign principals who engage, *whether or not on behalf of their foreign principal*, in activities not included among the exceptions set forth in the act and regulations shall be considered subject to the requirement of registration." [Italics supplied]

Doing some paraphrasing suggested in part by the defendant during oral argument, this regulation reads: (political) agents of foreign principals who engage in (political) activities shall register. This is a fair transposition if the language "whether or not on behalf of their foreign principal" is excluded, for the only agents of foreign principals with which the Act is concerned are political ones, and again activities that are not among the exceptions are political ones. Yet this can scarcely be the meaning of the regulation for it is already abundantly clear that political agents are to register. Hence it seems that the important clause is, "whether or not [the registrant's activities are] on behalf of [his] foreign principal". Whether or not they are, he shall be subject to the requirement of registration, and being subject to the requirement of registration must mean not only the act of registering but also all the duties and concomitants of registration. We interpret the regulation to mean that all political activities of an agent, whether they are done as a part of his agency or on his own, shall be fully disclosed.

This interpretation is fortified by question 11 of the form: "Comprehensive statement of nature of business of registrant." Other items in the form bring out the nature of the foreign principal's business, and the details of the principal-agent relationship. Item 10, for example, reads: "nature of business of foreign principal . . . ." In Item 11 attention is focused upon the registrant and the scope of the statement is enlarged: make a comprehensive statement of the nature of your business. In view of a large part of the meaning of the word comprehensive, we believe that the answer, public-relations, for ex-

[12] Compare United States v. Curtiss-Wright Export Corp., 299 U. S. 304.

ample, would not be satisfactory. Comprehensive's usual meaning calls for more fullness and more detail than that.[12] The form, moreover, has some 8½ blank lines after this statement. The registrant has been warned to file supplementary papers if necessary in order to give complete answers.

This item of the form does not merely fortify our interpretation of the regulation in paragraph (12). Item 11 in itself is an exercise of the Secretary's power requiring registrant to reveal his own political activities. The form is a regular and official action of the Secretary. Its effect is that of a rule or regulation. We conclude that the statute authorizes the Secretary to require and the Secretary has required a registrant to reveal with some semblance of detail all "political" activities.

The Charge Against this Defendant.

We come now to the circumstances of this case. The Government charges that defendant willfully omitted to disclose material facts in three supplemental registration statements. This covers roughly the period from October 1, 1939, to April 25, 1941. More particularly the Government charges that defendant's answer, "author and journalist", to Item 11 was not a comprehensive statement of the nature of his business. The Government proceeds to show much work beyond the scope of defendant's statement. Much of this work reveals defendant as a very active propagandist. That, the Government charges, was a pursuit, an activity, which the defendant did not disclose either in general name or in *modus operandi*. Propaganda is a political activity; thus it is definitely under the coverage of the Act, as just construed, no matter for whom the work was done. The jury concluded that defendant had been engaged in at least some of the activities the Government tried to prove, that defendant had willfully failed to disclose them, and that they were material.

A. *Indictment Within the Statute.*

With the smoke cleared away we can dispose of much of defendant's argument in short order, namely, his contention that he was indicted for one thing, tried for another, and neither of which was a crime under the Statute. Defendant's contention is euphonious but not meritorious.

It is argued that the crime charged in the indictment is not within the Statute because the former alleges that defendant willfully omitted to set forth a, b, and c, as a *part* of his business and *activities* whereas the latter with its appropriate regulations and forms requires only a statement of the *nature* of registrant's *business*. The use of the word, part, in the indictment can be readily supported. After all, defendant did disclose some of his business. Naturally he could only omit a part, not all. That he failed to disclose a part of the activities, rather than

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[12] Webster's New International Dictionary (2nd ed., 1939) defines comprehensive as follows:

1. Including much; comprising many things; having a wide scope; inclusive; as, *comprehensive* definitions, ideas.
2. Having the power to comprehend many things; of wide mental grasp. "His *comprehensive* head." *Pope.*
3. *Logic.* Intensive.

Syn.—Extensive, wide, large, full, compendious.
Ant.—Narrow, limited, restricted, circumscribed.

a part of the nature of the business is too subtle a distinction in wording to make the indictment defective. The nature of one's business may be a more generic abstraction describing one's pursuit than a list of his activities, but the generalization must come from several types of activities to be an accurate definition. When a *comprehensive* statement of the nature of one's business is required then there must be some detail for completeness and accuracy. Moreover, the Act mentions activities as an agent, and paragraph (12), already discussed at some length, uses the word activities. By that time a registrant is notified that nature of business and activities are to be used interchangeably or at least as approximate synonyms. We cannot accept the hypertechnical argument of defendant.

B. *Crime Proved Within Indictment and Statute.*

It is argued that the crime tried was not that charged in the indictment, nor was it an offense under the Statute. Defendant makes the vivid statement that he was tried for being a propagandist. Stating the case this way makes an appeal, of course, to all our people who relish and support our civil liberties. Defendant, however, was tried for (and his brief as well as many parts of the record show that he was well aware of it) willfully omitting to state material facts in his three supplemental registrations. More particularly he failed to reveal fully what his "political" work was. He said that he was an author and journalist. That is, to be true, a small part of the truth. But he was much more than that. It may be unfortunate that a part of the more he was, was a propagandist, but such was the case. The Government had to show, *inter alia*, that he was a propagandist in order to prove a part of his work which he willfully omitted to disclose. So naturally there is talk of propaganda in the case, but defendant was not tried for being a propagandist. He was tried for failing to disclose some of his propagandistic work. The error of defendant's argument can be readily seen if we state a suppositious case. If this country were making an extensive manpower survey and one of the questions sent to citizens was, state all professions, trades, and businesses in which you have ability and skill, and if the Act made the failure to make a full disclosure a crime, and if our hypothetical registrant put down author and psychology teacher, and if later it was learned that he was no mean chemist, would it be said that the subsequent prosecution tried him for being a chemist?

In this connection defendant states in his reply brief in italics: "Therefore, this case on appeal must be limited to the alleged failure to reply properly to paragraphs 11 of these three supplemental registration statements and to them alone. The Government's brief fails to make this clear. It confuses and beclouds the issue as it was beclouded in the trial court." If the Government's brief here beclouds the issue as it was beclouded in the trial court, then it was not beclouded there.

We have read all the record brought to us in defendant's Appendix and we have read liberally from a copy of the original transcript. We believe that the issues were kept quite clear considering the length of the trial and the amount of the evidence necessarily taken. If anything the Government beclouded the issue less than defendant.

Activities Not Disclosed.

As indicated, the main issue of the trial was the failure of defendant to disclose a material part of his business. Defendant said that he was an author and journalist while registering for two foreign principals, the one, the Munich Newspaper, the other, The German Library of Information. Was he more than an author and a journalist? Without doubt the answer must be in the affirmative. In many cases there would be no call to discuss the evidence in a situation like this where the evidence is more than sufficient and the sufficiency is not in issue. Considering the times and the features of this case we think that it is well, however, to give some of the factual detail to remove any lingering doubts of the propriety of this conviction and sentence. This discussion will also throw light upon the general lack of merit and *de minimis* nature of defendant's contentions concerning other alleged errors.

Defendant's business on which evidence was taken and which he did not disclose over the 18 months' period may be put into four classifications: (1) his direction and control of Flanders Hall, a publishing institution, interested in political subjects; (2) his organization of, and activities in behalf of, Make Europe Pay War Debts, Islands for War Debts, and possibly War Debts Defense, Committees, all with a political twang; (3) his work in helping a late Senator prepare his expression of views on political topics; (4) his assistance in disseminating political views of Congressmen coinciding with his own, or coinciding with, or at least of no hindrance to, those of his foreign principals from whom he was receiving a large income.

A. *Flanders Hall.*

Flanders Hall was incorporated in 1939 as a small New Jersey publishing house by the Hauck brothers. It came to pass that Sigfried Hauck, the President of Flanders Hall, Inc., met defendant after defendant had praised Hauck's book, published by Flanders Hall. This was the only book Flanders Hall had published; as it turned out it was the only book published by Flanders Hall from some time in 1939, when it was incorporated, until after defendant took over in August, 1940. Similarly, defendant's commendation was one of only a few received by the author. The defendant became interested in Flanders Hall.

After a time, on August 3, 1940, defendant and Flanders Hall, Inc., executed a written contract prepared by defendant. Part 2 read: "I [defendant] have from time to time certain works which I would like to see published and distributed and I am willing to advance the necessary expense for this purpose under proper terms and conditions." This is probably not the usual publisher-author arrangement. Defendant, may it be remembered, registered as an author and journalist. Part 5 read: "In view of my interest in the company and the obligations which I am taking upon myself, you agree to make no disbursements, large or small, without my written consent; to furnish me weekly with a statement of expenses; to give me or my deputies access to the books of the company whenever requested and to incur no liabilities on behalf of the company without my knowledge and consent. Failure to abide by this clause will invalidate any obligation on my part toward the company." Part 6 provided: " . . . Flanders

Hall, Publishers, give me the option to purchase 66⅔ per cent of their outstanding capital stock at a price not to exceed $500." Again, this is probably not the usual publisher-author relationship, and it definitely put defendant in financial control of Flanders Hall.

Defendant was concerned with policy as well as with financial control. Flanders Hall set out on a series of Books-of-the-Hour. In one of its circulars, drumming up a market for this series, appears a letter by the editor-in-chief which it was shown was prepared by Hauck and the defendant.

> Dear Fellow American:
>
> I am writing to you because I am sure that you are anxious to see the United States stay out of all foreign wars. . . .
>
> . . . We are urged to give our blood and our treasure to make the world safe for British "democracy".
>
> Common sense dictates a rigid examination of the "democracy" we are asked to redeem. BOOKS-OF-THE-HOUR vividly illustrate, among other vital issues, the workings of this "democracy" in India, in Ireland, in Egypt, in Palestine and elsewhere. These books are based on authentic material from many sources. . . . The facts were known to every schoolboy in the past, before skillful propaganda gradually erased them.
>
> . . . . In this spirit, Flanders Hall has embarked upon a campaign of education. Ours is a patriotic task, for which we freely ask the support of all those who believe with us in AMERICA FIRST AND AMERICA ONLY.
>
> Yours for our country's sake,

With an expressed effort to show the American people the inside information on how badly democracy is working, particularly in the British Empire, and with the revelation that "Flanders Hall has embarked upon a campaign of education", it is certain that activities are revealed which are within the scope of the Act.

Clearly, defendant's work in Flanders Hall was more than that of "author and journalist". Assuming for the moment that the revelation of all the details of a registrant's business is not required, this designation of author and journalist does not even summarize the outer confines of defendant's occupational pursuits. When defendant, in another separate registration, registered as agent for one Wirsing, Editor of the Munich Newspaper, to handle a book in this country which was put out by Flanders Hall in a fashion similar to that of the Books-of-the-Hour, he designated himself as "author, journalist, and publicist." So when defendant controlled a publishing house, when he supervised a circular that was its chief means of advertising, he was at least a publicist by his own better judgment, irrespective of how much more he may have been. Moreover, defendant had said that Flanders Hall interested him; he liked the idea of running a publishing house because it would give him something to fall back on. After the idea was realized, then, it would seem that the running of Flanders Hall was a part of his business.

Merely giving the most generic terms possible in describing the nature of registrant's business is not, we believe, a compliance with the spirit of the Act. This is brought out in bolder relief in this case when

it is realized that some of the publishing done by Flanders Hall was surreptitious. There was proof that two of the books published by Flanders Hall concealed the source of their texts. One purported to be from the French of La Touche. Another purported to be from the Dutch of Vroom. In fact both of these books were translated from the German of other authors and had been published by the German Information Service. One other book purported to be compiled from British sources by an Ethiopian, when in fact its author was German. Defendant directed Hauck to change the names of the authors on two additional manuscripts. When books are written on international problems and the author is shifted from one country to another under a fictitious name, it can readily be appreciated that at least one object of those in control is to mislead the reader. Flanders Hall embarked upon a campaign of "education", but much of its work was secretive. The defendant reminds us: "Propaganda may insidiously disguise itself as education. It may pretend that it is merely a straightforward campaign for publicity. But it varies from both education and publicity in that the element of camouflage in one form or another is always present."[14]

Defendant was in control of Flanders Hall. As such he was at least a publisher, a propagandist, and a publicist as well as being an author. Defendant failed to state this kind of work that he was doing, and his interest in, and operation of, Flanders Hall.

B. *The War Debt Committees.*

One of the employees of the Make Europe Pay War Debts Committee testified that defendant told her that he and three others had organized that Committee. This employee further testified that she had reminded the defendant that two prominent columnists had said that he was giving candy to office girls on Capitol Hill. She further reminded him that she had seen him two or three times in the Committee's office. In reply, she testified, defendant said to her, "I should have brought you some candy, and then you would not have seen me over there."

The evidence showed that one of the chief jobs of the Committee was to send out speeches of isolationist Congressmen. At times the Committee had seven or eight employees addressing franked envelopes to carry the speeches. Isolationist speeches by Congressmen are definitely political material unless the subject matter of politics has been greatly changed recently.

We have defendant's admission that he was one of the organizers of the Committee. There was much evidence from which it could be inferred that he was a director of the Committee after its organization. The forming and running of a committee of this kind is a business pursuit of some sort. Under the law defendant was called upon to make a disclosure, and even if he only designated the broad nature of this part of his business he should have said something to the effect that he was an organizer and a director of committees to disseminate political material, and named them.

The name of the Committee was later changed to "Islands for War Debts Committee". It was suggested by the record, although we

[14] VIERECK, SPREADING GERMS OF HATE (1930) p. 11.

believe that there is no direct testimony, that the name was later changed again to War Debts Defense Committee.

C. *Assisting in the Preparation of a Senator's Speeches.*

The defendant worked with a late Senator on at least three speeches, entitled, "Lord Lothian vs. Lord Lothian", "German-American Trade Relations", and "Six Men and War". While the first was largely quotations from speeches and writings of Lord Lothian there was an introduction and the matter of arrangement. Further, some material for this speech was delivered to the Senator's office from the German Embassy at defendant's request. The second speech, the one on trade relations, found defendant dictating the outline in the Senator's office. Again the defendant had the German Embassy send over some material. Later the Senator told one of his employees in defendant's presence that he would not use the material the employee had collected, because the defendant had better material. In connection with the third speech one of the Senator's employees testified that she heard the defendant say to the Senator, "I have tried to phrase it in the best way I could in the manner in which you speak."

Assisting a Senator in the preparation of his speeches, and maybe even aiding him in reaching the views that were to be conveyed, would seem to be political activity. Perchance such work is only that of an author, but we think that it is more than that. Moreover, the defendant did not reveal in any way for whom he wrote. His registration statement would give the idea that he was writing only that which appeared under his name. The spirit of the Act required defendant to detail his disclosure more than he did. He should have been definite enough that others could consider his work for what it was. As it is, defendant was attempting to be sole judge of the nature and effect of his work. Registration is meant to do more than that.

D. *Disseminating Views of Congressmen on Political Topics.*

We come to an activity carried on in connection with, or as a corollary to, the two immediately preceding ones just discussed, but it is a sufficiently distinctive type of work to be recounted in its own category. This activity is the work of picking out Congressional literature with views that are liked and seeing to it that they get before more people. The defendant became a sort of publicity agent for the "good" (from his viewpoint) already created. This dissemination, probably beyond the hopes of the original author, was of material obviously political in nature.

In this connection there was evidence that defendant secured from a clerk of a Congressman a mailing list of the National Committee to Keep America Out of Foreign Wars. This mailing list had some 100,000 names. Later this same clerk at defendant's request made a mailing list from "Who's Who in America".

The defendant had this clerk send out 125,000 copies of the "Six Men and War" speech referred to in the previous heading. There was much additional testimony concerning the insertion of material in the Congressional Record under Extension of Remarks, the ordering of reprints, mailing them out, from which it could be inferred that defendant was the instigator, organizor, and supervisor of many more instances of this same general type of activity.

Thus the evidence shows that defendant was engaged in at least four types of political activity which he did not disclose. He merely said, as to his business, that he was an author and journalist. Under our construction of the Act it was necessary for defendant to reveal these four kinds of political activity even if they were done entirely on his own. Hence defendant failed to disclose facts material to a full, truthful answer to Item 11: give a "comprehensive statement of nature of business of registrant." There was plenty of evidence that defendant acted willfully.

These Undisclosed Activities May Have Been a Part of an "Undisclosed" Agency.

The instruction to the jury was that if they believed defendant willfully failed to state material facts, whether or not the activities were done pursuant to his agency, they should find him guilty. The discussion so far was necessary to justify the instruction in case the jury believed defendant was acting entirely on his own in respect of these undisclosed activities. The jury may have believed, however, that all or some of these activities were carried on by defendant in his capacity as an agent for foreign principals. To borrow from another field of law, it might be said that defendant was acting as an undisclosed agent as well as a known one. The failure to disclose activities done pursuant to an agency would be particularly pertinent under Item 12 where a registrant must set out his full agreement, oral or written, and we suppose, expressed or tacit. Also, again to make the Act feasible, the registrant should disclose what is done in behalf of his foreign principal even though it may extend beyond any agreement or contract, particularly when the foreign principal is paying at a rate high enough to include many "extras"; during the 18-month period involved, defendant received something like $65,000 from his three German principals. Of course the indictment might still focus upon Item 11 if it is believed that registrant's business as there used is meant to include both agency work and his own. Such a construction would mean some overlapping with Item 12.

On the matter that these undisclosed political pursuits may have been a part of the undisclosed agency, we quote interesting excerpts from a letter by defendant to an associate of The German Library of Information, one of defendant's foreign principals. The letter, partly in the nature of a contract, was marked "Agreed" by the Associate, Mr. Schmitz.

January 25, 1941.

Dear Mr. Schmitz:

. . . . It is perfectly obvious, as you yourself pointed out, that I am entitled to four or five times the salary I receive at present.

* * *

Facts in Review [the journal put out by the Library], *together with such literary work as I have from time to time undertaken for you, absorbs nearly my entire time.* I am not in a position to keep up my other journalistic activities or to write a book, which I have been planning for several years. I have not, since I undertook the job, had even one week's vacation. I do not complain of this, for what task could be more pleasant and more stimulating than to work for a better understanding between the

land of my birth and the land of my adoption in spite of all obstacles placed in the way of neutrality and fair play! . . .

You have allocated to me from time to time *special remunerations as your literary advisor. Your book ventures have developed considerably and make constant calls upon my attention.*

. . . . . .

You asked me what would be an equitable remuneration. After considerable thought, I reached the figure of $2,500 per month, which was the basis of our last conversation. . . . For the sum mentioned I shall continue my work for Facts in Review and act as your chief literary advisor on *all books sponsored by the Library.* . . .

I need not repeat, because I know that you agree with me heartily, that the stipulations of my contract apply to any new work which I may undertake:

1). It is clearly understood that I am not called upon to do any work which conflicts in any way with my duties as an American citizen.
2). I am not required to sponsor any publication which in any way enhances the tension between the races and religions represented by the divers elements which make up the United States.
3). This agreement may be cancelled by either side on three months' notice.
4). In case the warmongers should succeed in poisoning the relations between your country and mine to such an extent that a rupture of relations takes place, we are mutually and automatically released from all obligations.

. . . . . .

Permit me to assure you that it is both a pleasure and an honor to work with you, a man who, like myself, has drawn his intellectual sustenance from German and American sources and who considers no task more sublime than to break down with the battering ram of truth the barriers of hate and misunderstanding which propaganda, abetted by malice and ignorance, attempts to rear between your country and my own, the United States.

Cordially yours,

(Signed) GEORGE SYLVESTER VIERECK.

[Italics supplied]

This letter, even through its self-serving declarations of patriotism,[15] speaks for itself, but we wish to make one particular point before proceeding. In the letter defendant tells The German Library of Information that his work for them absorbs nearly all of his time. Yet the four classes of work which we discussed and which he did not disclose were not exactly spare time jobs. It is no strained inference, in fact the thread of circumstance is not even pulled tight, to conclude that

[15] "It has been said that patriotism is the last resort of the scoundrel. It was the first resort of the propagandist. Every propagandist draped himself in the flag." VIERECK, SPREADING GERMS OF HATE (1930) p. 106.

this undisclosed work was a part of defendant's agency with The German Library of Information.

There was much more evidence from which it could be inferred that defendant was carrying on his clandestine work in behalf of the foreign principals. It might have been better for the Government to have prosecuted this case on that theory alone. But that was not the way it was done. The case was presented to the jury on the basis of a failure to disclose all of registrant's business. If there was a failure to disclose any political activity, it was a failure to disclose a part of his business.

There was more than sufficient evidence to show that many political activities were a part of registrant's business, and that they were a part of his business whether it was his business as an agent or his business on his own. Such a failure to disclose, willfully, these material facts constituted a violation of the Act.

The Act and the Regulations are Sufficiently Definite.

We have discussed the more fundamental aspects of the case. The next contention made by defendant concerns the definiteness of the Act and its authorized regulations in view of the fact that a new crime is created. This proposition is related to the authorization issue, *i.e.*, is it clear that the defendant had to disclose this kind of activity, and if so, to what extent. There is, in addition, another question. Since the crime of failing to disclose is limited to a material fact, is the standard of materiality objective enough for a criminal law,

In respect to the first part of the problem, the issue might be stated: was defendant notified that this type of activity, the type in which he was engaged but did not mention, must be revealed in some detail. It is considered a healthy aspect of our legal system that no person who sees a sign, "Danger! Thin Ice", is supposed to skate around until he finds the exact breaking point.[16] There cannot be the slightest doubt that this defendant knew that the warning to disclose had been given. He also knew that he was skirting the line of demarcation in leaving unrevealed many of the things he did. Under such circumstances, one would be giving the outlaw more than the famous American sporting chance, if all possible doubts were to be resolved in favor of the defendant.

It is true that the 1942 Act is more definite. It states, in subsection 2(a)(6), "A detailed statement of every activity which the registrant is performing or is assuming or purporting or has agreed to perform for himself or any other person other than a foreign principal and which requires his registration hereunder".[17] The defendant stresses this 1942 Act, and argues that the fact that the 1938 Act as amended in 1939, fails to make this point or fails to make it so definitely and explicitly, is conclusive proof that such a point was not within the intendment of the earlier Act. In fact this argument is made so often and so fervently that one wonders what defendant would have done if there had been no 1942 Act. While there is some force in subsequent legislative history to show what earlier Acts covered, a certain amount of wariness must prevail. There is a chance that a later Act merely

[16] United States v. Wurzbach, 280 U. S. 396, 399.

[17] Pub. L. No. 532, 77th Cong., 2d Sess., c. 263 [S. 2399] (April 29, 1942).

provided the same as an earlier in better language, or as may be the case here, the later statute may have directed that a detailed statement of activities in the registrant's own behalf be made, whereas the earlier Act authorized the Secretary to make the requirement. The fact that a certain provision is better said or is changed to a requirement rather than an authorization is not conclusive proof that it was never in the first Act, as defendant in practical substance contends.

In this particular instance of statutory history, the Report of the Judiciary Committee of the Senate accompanying the bill[18] which became the 1942 Act, in effect contradicts defendant's line of reasoning based on this last Act. It shows that it was thought that the 1942 Act made no change in what a registrant had to disclose concerning the nature of his business. Four major and some minor changes are discussed, but this is not one of them. In fact, the Report incorporates a letter from the Attorney General which mentions this matter expressly. "The registration statement of an agent of a foreign principal engaged in the dissemination of political propaganda would require full information as to his relationships, status, activities, and financial transactions (sec. 2(a)). [Section 2(a) includes § 2(a)(6) quoted above.] *This provision of the bill is merely declaratory* with respect to the requirements of the registration statement of foreign agents as *now* prescribed or *may be* prescribed by the Secretary of State under section 2 of the existing statute."[19] [Italics supplied] If Section 2, dealing with the original registration, gives the authorization, obviously it is within Section 3 and its supplemental statement, which brings the material in the original registration up to date.

We have already discussed our conclusions that the Statute authorized, and the Secretary required, a statement in some detail of registrant's activities, including those which might be technically or even actually on his own. We conclude that the Act, the authorized forms and regulations, were sufficiently definite to notify the defendant and to be the basis of a criminal charge.

As to the argument that the term "material fact" in Section 5 of the Act is an inadequate standard, we need only point out that such a phrasal criterion has long been an accepted part of our system of laws. There have been many convictions of false-swearing on a fact material to the issue. The self-same material fact idea and phraseology are used. After a layman has read this Act and these regulations, as he swears he has when he registers, the chances are he would have a far better idea of what facts are sought through the registration than an ordinary witness would have about what fact is material to a certain issue in a trial. Moreover, the registrant has far more time to select, reject, and frame his answer when filling out a registration statement than does a witness before a grand or petit jury. We conclude that the Act and the regulations are not too indefinite for supporting the criminal provisions.

The Discussion of the Legislative History.

Defendant complains of the Court's discussion of the legislative history of the Act in its charge to the jury. As a rule, a court does not discuss before a jury the legislative history from which it draws

[18] Sen. Rep. No. 913, 77th Cong., 1st Sess., accompanying S. 2060.

[19] *Id.* at 11.

material for its interpretation of a statute. Such "thinking out loud" is likely to be misunderstood by a jury whose contact with the law is casual.

In this case, the discussion of the forming of a special Congressional committee, the paraphrasing of that committee's report, the statements that the Act was intended to carry out the objectives suggested in the report, may have been an orientation course for the jury. This orientation may have enabled the jury better to see this case, their part in it, and may have given them a sense of perspective on modern history.

We conclude that the discussion of the legislative history was not prejudicial or reversible error. After this background discussion, the Court charged as a matter of law what the law was. The law so laid down was substantially in accord with what we have already said was the intent and proper construction of the Statute. The important thing is that the Court did not pass any of its functions to the jury. With the Court eventually declaring, in positive terms, the law, the jury were not misled, nor were they called upon to interpret the law, to attribute the degree of significance that should be given any part or all of the legislative history.

The Book, "Spreading Germs of Hate".

Defense counsel objected to the introduction of defendant's book entitled, "Spreading Germs of Hate." Defendant wrote this book in 1930 and it relates a story of propaganda in the 1914-18 war. The book is an interesting combination of facts, imagination, suggestions, and inferences. The author has said its purpose was to reveal propaganda and its technique, in order to immunize the American people against further exposure. The purpose could well have been further propaganda, an attempt to laugh off all the past so that those countries which had gotten far behind in the propaganda race could start off even again in the matter of selling themselves to the United States. Be that as it may the main theme of the book or the ultimate purpose of the author need not be fully and correctly understood for our purposes.

The book is largely autobiographical. The defendant shows himself to be a great propagandist of the last war. He reveals to some extent the methods of his foreign principal in that war. The book was introduced as evidence on the issue of intent or willfulness. It suggests the willful nature of defendant's acts set out in this indictment because of the similarity to those during the last war, and the book also shows defendant's thoroughgoing knowledge of how his foreign principal worked then. With this knowledge he was able to do it again with improvements. Of course propagandizing was no crime, but it shows that defendant knew how not to disclose too much.

The Government introduced the book with the argument that it revealed prior similar acts of propagandizing with its always present secrecy or confusion to show that any failure of the defendant to make a full disclosure was likely to be a willful act. The book, while revealing some prior similar acts, did not show a highly interrelated chain that were closely akin except for the fact that most of them would come under the head of propaganda. It might be better argued, therefore, that the book showed the author as an expert in this field of activity. If defendant was an expert in the relation of the law to

propaganda and counter-propaganda, and if he was well versed in the necessity of a foggy atmosphere of confusion, secrecy and camouflage encompassing propaganda and counter-propaganda, then there is little basis for believing that anything defendant did in covering up the scent was done carelessly and inadvertently. In this book, defendant stated, "There is no safeguard which the law can create which human ingenuity cannot circumvent." [20] This argument, of course, also supports the introduction of the book on the issue of intent. The book was subsequently used liberally by both sides. Later, the defendant made 18 prayers in respect of instructions to the jury. None of them in any way concerns the book. Hence defendant made no request for an instruction limiting its purpose. We see no error in the introduction or retention of the book as evidence.

Defendant Was Not Improperly Prevented from Introducing any Evidence of Importance.

Defendant has assigned error in respect of "evidence" which the Court would not allow him to introduce.

Defendant sought to introduce proof to the effect that some 500 out of about 560 registrants answered Item 11 of the form like he did. During his offer of proof defendant's counsel stated that, "We propose to show that the statements filed by this defendant are entirely consistent with the Department of State's interpretation of the statute and their own regulations."

It is difficult to understand how the interpretation of many registrants as revealed, if there is any objective revelation at all, by their filling out of the forms, is indicative of the State Department's interpretation of the statute and their regulations. Moreover, the Department had made an express warning in this connection, "Acceptance by the Secretary of a registration statement submitted for filing shall not necessarily signify a full compliance with the act on the part of the registrant . . ." [21]

The defendant, apparently seeing the force of this argument, that one person's interpretation does not bind another, particularly when the latter has official status, has conceded that perhaps the offer of proof was not as clear as it might have been, but maintains that the offer, at any rate, also shows that the evidence tended to prove lack of willfulness of this defendant. If 500 out of 560 people read a statement with legal implications the same general way, it might appear at first blush that the defendant, one of the majority, had not committed an act that was a willful violation. Against this is the well known general proposition that one cannot argue that this man committed no murder because there have been a lot of killings of late, some of them in self defense. It would seem, moreover, that it is almost certain that

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[20] P. 90. We give a fuller quote here. Speaking of the law and the last war, defendant said, "While the law requires that the ownership of a newspaper must be fully disclosed, there was nothing to prevent the German Government or an individual German from making a present of several million dollars to an American sympathizer; nor was there anything to prevent the sympathizer from making this money talk—for Germany! There is no safeguard which the law can create which human ingenuity cannot circumvent." Compare the discussion above under the heading "These Undisclosed Activities May Have Been a Part of an 'Undisclosed' Agency."

[21] Paragraph (5) of Chapter IV of the regulations.

the quarrel over whether any given answer was "like" defendant's would be endless, and would present innumerable collateral issues.

In this case, there are several factors that may have entered into the answers of others, even assuming that they were like answers. First, for a large number of the registrants that type of answer might have been correct under their circumstances. Second, many of them may have omitted material facts, but not willfully. Third, one or two lawyers might have advised many of the total number of registrants to answer that way. Fourth, there may have been a lot of evasive foreign agents in this country.

A Gallup poll is not a good way to show the intent of a particular individual. The time may come when there can be scientific breakdowns to common denominators. If so, then if some tremendously high percentage react a certain way, and it is shown that this individual is a man of normal reactions and he reacted as the great majority did, such proof might have a little probative value. It may come to pass that courts will occasionally admit evidence along this line if human nature is analyzed so objectively that one dimension can be handled at a time and no imponderables remain. But as of today we see no error in the Court's ruling of exclusion. Counsel have referred us to no legal authoritative material to the contrary.

Defendant briefs two other rulings which curtailed his introduction of "evidence". One of the alleged errors occurred during defendant's cross-examination of an employee of the British Censor's Office, and the other occurred in connection with the Bureau of Internal Revenue's response to a subpoena issued at the request of defendant.

The Government brought to the stand an employee of the British Censor's Office in Bermuda. This employee testified that she had intercepted a manuscript of a certain ex-Senator sent by defendant to the German Embassy in Lisbon; the defendant had addressed the envelope to an alias used by the Embassy. During cross-examination defendant's counsel asked if it was the job of that office to censor all mail going through Bermuda. A little later defense counsel asked for the size of the staff. The witness indicated that she was not free to answer either question under the policy of her government. The Court sustained her position and refused to instruct the witness to answer as requested by defendant.

From a reading of the record it does not seem that the questions were at all crucial or even pertinent to the defendant's case. The problem of balancing freedom of cross-examination, assuming that it is material cross-examination, against other policy is one within the discretion of the trial court. Under the circumstances we are of the belief that the trial judge exercised his discretion in a sound manner, much less committing any abuse.

The remaining objection in the realm of evidence grew out of a sequence of events. The prosecution had introduced evidence in redirect examination which showed that a late Senator had used a "kickback" system in connection with his employees' salaries. The defense felt that the inference could be made that the Senator received the money for his own personal use. When the Senator's widow was on the stand she testified that the employees had made statements to the Bureau of Internal Revenue in connection with their income tax returns. The Government objected to further testimony on the ground

that the statements were the best evidence. In response to an inquiry by the Court the witness testified that she could get the statements. It turned out that she could not. So the defense served a subpoena on the Bureau of Internal Revenue. A representative responded but without the papers on the basis that they were confidential. The Court approved his refusal to produce.

It can be seen that the clearing up of this matter in the Senator's office, even if it had moral implications, was not particularly material to the guilt or innocence of this defendant. Even if it were, it should be noted that the defendant after he learned that the papers were unavailable made no attempt to turn to secondary evidence, and the witness had indicated that she knew the contents of the papers.

The Exclusion of One of Defendant's Counsel.

The last two points to be discussed deal with counsel. Defendant says that the exclusion of his counsel was error, and that the prosecutor was guilty of gross misconduct to the prejudice of defendant.

We deal first with the exclusion of one of defendant's trial counsel. This counsel was questioning an employee of the Department of State who had prepared the registration form. Counsel was seeking testimony as to where the witness thought the statute authorized Item 11 of the form, and as to the meaning of Item 11. The Court had said, "If there is a question incident to the issue, it is a question of law for the Court." A little later, after several similar attempts and objections, the following occurred:

Defense counsel: "I am not asking this witness for a statement of law, if the Court please. He prepared these forms. He said he prepared these forms from the statute. I think it is a fair and reasonable question to ask him what portion of this statute this question was taken from.

"After all, he prepared them, we did not prepare them. If he does not know, who does know?"

The Court: "The objection has been sustained."

Defense counsel: "Now, if the Court please, I think your Honor has foreclosed us from a very important line of inquiry into this case. I think in view of your Honor's rulings throughout the Government's testimony and throughout the defendant's testimony, I charge that your Honor is biased in favor of the Government and prejudiced against this defendant.

"I say that this defendant has no alternative but to rest his case."

Government counsel: "Do I understand—"

The Court: "Any further questions?".

Government counsel: "No, we have no further questions at this time."

The Court: "You may be excused, Mr. Witness."

(Witness excused.)

Government counsel: "I understand the defendant rests."

The Court: "Has the defendant rested his case?"

Defense counsel: "Yes, if the Court please."

The Court: "Is there any rebuttal?"

Government counsel: "No, sir."

The Court: "Very well, the Jury will keep in mind the admonition [not to discuss, listen to any comment on, or form any opinion concerning, the case] and be back at 1:30."

(Whereupon at 12:30 o'clock P. M. a recess was taken to 1:30 o'clock P. M.)

After the recess, the Court, before the jury was brought back to the trial room, directed that the defense counsel concerned should no longer participate in the case. The Court noted that the defendant had two other able counsel, a copartner from a New York law firm, and a local practitioner. When counsel suggested that they had divided up the work and that the ejected counsel had done the preparation on some items still to come, the Court suggested that remaining counsel take additional time to get ready on their new work. A study of the record shows that defendant had adequate representation from that time on.

Although the Court's ruling, ejecting counsel, was out of the presence of the jury, defendant suggests that he was prejudiced because the jury could later see that this counsel was no longer active. Gauging such influence, if any, would be a very subjective job; at best the "prejudice" would be remote. In this case, moreover, work between counsel was divided up all of the way at both tables.

It appears that the trial court's action was perfectly proper. At any rate no prejudice has been shown and as far as we can see none existed to the defendant's case. Defendant's argument here, for the most part, is more of an attempt to vindicate counsel, or at least to suggest that there should have been a contempt trial before the lawyer was ejected, than to show prejudice to himself. If defendant's unwarranted explosion succeeded in the sense of obtaining a new trial, there would be put in the hands of all defense attorneys a highly useful but foul technique.

The Misconduct of the Prosecutor.

Defendant alleges that gross misconduct of the prosecutor was prejudicial to him. It is true that some of the conduct of the prosecutor involved was not exemplary, particularly in view of his office. Part of this in turn was due to the behavior of defense counsel. It, too, was not always exemplary. There were many uncalled for remarks on the part of both attorneys throughout the trial. We are not attempting to balance out the respective incidents of trial behavior, and it would not decide the issue of prejudice to the defendant if we did.

The first instance of alleged misconduct referred to by the defendant is that the prosecutor tried the case in the newspapers. There was no showing nor even any sufficient allegation of any concerted action between the prosecutor and the agents of the press. The defendant states that the newspaper stories had so roiled up the community that there should have been a change of venue or a continuance and he so moved. The record reveals that the jury

was chosen very carefully, and both sides accepted the jury which was eventually sworn. These contentions carry us beyond the misconduct of the attorney. Even so, we think that the trial court properly exercised its discretion on the matter and all its corollaries.

The second example of defendant's charge of misconduct on the part of the prosecutor is the several allegedly inflammatory statements to the jury. We believe that many of the statements were improper. Most of the worst examples of inflammatory remarks, however, came in the closing argument, to which no objection was made until far too late. The objection was not made until after the closing argument was concluded, the Court was well along in its charge to the jury, and a noon recess had been taken.[22] No opportunity was given to the Judge or to the prosecutor to water down any flames started. Other remarks do not appear as bad in context as when isolated in defendant's brief. Some of the remarks were corrected during the course of trial. The Judge maintained a good surveillance in this connection. A careful study of the record shows that although some of the remarks of the prosecutor were improper, on the whole it cannot be said that there was prejudicial error.[23]

One of the items grouped under inflammatory statements to the jury involves actions as well as words. Defense counsel had stated that they wanted copies of speeches referred to by a Government witness. The prosecutor indicated that he could bring them in by the mail bag full. Later during a conference at the bench concerning the recalling of a witness to identify the mail bags, the Court expressly ruled that the witness would not be returned. A reading of the record may give the inference that the Court did not want the mail bags around either, but there was no express ruling. Shortly thereafter, while the defense was busy cross-examining a witness, the prosecutor had the bags brought into the court room. The defense objected, and later the Court ruled them out of the room. This appears to us to be unnecessary stage business on the part of the prosecutor. We do believe that the ends of justice would not be served, however, by reversing on instances of improper action like this, considering the many aspects of this case, including a 1700-page record and several thousand pages of exhibits.

Defendant's final contention pertaining to the misconduct of the prosecutor concerns his reading from certain memoranda from the files of a well known periodical. These memoranda were in connection with defendant's attempt to counteract a recent article in the periodical which discussed Hitler and an alleged "maid" who supposedly did more than clean the house and prepare meals. The memoranda were admitted in evidence over defendant's objection. It seems that the present argument is really a renewal of the objection to admissibility rather than to any misconduct on the part of the prosecutor. The prosecutor could not help the fact that the evidence dealt with subject matter potent in emotional connotations. The defendant has not seen fit to stand on the inadmissibility of the evidence.

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[22] United States v. Socony-Vacuum Oil Co., Inc., 310 U. S. 150, 237-8.
[23] *Id.* at 239.

The Imposition of Costs.

Defendant alleges one further error. It is that costs could not be imposed upon him in addition to his sentence of imprisonment and fine. Such an argument is seldom made. It is directly contrary to the unamended 1792 Statute.

> When judgment is rendered against the defendant in a prosecution for any fine or forfeiture incurred under a statute of the United States, he shall be subject to the payment of costs; and on every conviction for any other offense not capital, the court may, in its discretion, award that the defendant shall pay the costs of the prosecution.[24]

Defendant cites three cases in his original brief,[25] supposedly in support of his argument. These cases do not touch defendant's asserted principle of law, top, side, or bottom.

The Government's brief called attention to the statute and to the case of *Oates* v. *United States* (C. C. A. 4).[26] Defendant's counsel give two full pages in their reply brief to the heading "Government Brief is in Error in Claiming that Sentence Was in Accordance with Statute."

In this two-page development, defendant's reply brief relies entirely upon its own assertions and upon the case of *Whitworth* v. *United States* (C. C. A. 8).[27] The reply brief makes the clash head-on. The brief quotes from the *Oates* case: "'The Circuit Court of Appeals of the Eighth Circuit has expresly decided the point contrary to the position of defendant. [Citing the *Whitworth* case.]'"[28] The reply brief continues: "The 4th Circuit Court of Appeals evidently did not know what the 8th Circuit did decide in the *Whitworth* case. That was a case of embezzlement from the United States and Section 4046, Revised Statutes, provided for imprisonment and a fine equal to the amount embezzled. The trial court imposed a sentence of imprisonment, a fine equal to the amount embezzled, and the costs of the prosecution of the case. The 8th Circuit Court of Appeals said: 'This judgment was erroneous. The statutes gave to the court below no power to add to the fine prescribed by the act of congress the costs of the prosecution of the case. . . . The result is that, while there was no error in the receipt and acceptance of the defendant's plea of guilty, the judgment rendered thereon was not warranted by law.'"[29]

Thus the defendant's counsel have expressly represented to this Court that the *Whitworth* case stands for the principle that costs cannot be added to a sentence. Counsel have further bluntly asserted that the 4th Circuit misread the *Whitworth* case.

At the bottom of the same page in the Federal Reporter where counsel closed their quote from the *Whitworth* case, the following appears:

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[24] 28 U. S. C. A. § 822, R. S. § 974, 1 Stat. 277.

[25] United States v. Marshall, 6 Mackey 34; Harris v. Nixon, 27 App. D. C. 94; Fields v. United States, 27 App. D. C. 433.

[26] 233 Fed. 201 (C. C. A. 4).

[27] 114 Fed. 302 (C. C. A. 8).

[28] 233 Fed. 201, 207 (C. C. A. 4).

[29] 114 Fed. 302, 304-5 (C. C. A. 8).

Since the above opinion was announced, the attention of the court has been called for the first time to section 974 of the Revised Statutes, which provides: . . . [quoting the statute which we have quoted above].

This statute undoubtedly empowered the court below to adjudge that the defendant, Whitworth, should pay the costs of the prosecution, and if this provision of the acts of congress had been called to our attention, the judgment below would not have been reversed on account of the imposition of the costs. Meanwhile the case has been remitted to the court below, and the defendant has probably been re-sentenced pursuant to our direction. No motion for a rehearing has been made, and no injustice has resulted from our decision, because the conviction was not disturbed. The former sentence was very severe, and the presumption is that a just sentence has been imposed since our mandate issued. For these reasons the judgment will be allowed to stand, notwithstanding the fact that section 974 undoubtedly empowers the trial judge to award that the defendant shall pay the costs of the prosecution when he is convicted of any offense not capital.[20]

This definite, but incorrect, representation by defendant's counsel to this Court of what the case stands for requires our notice and the expression of our hope that it was done inadvertently. Yet, it is illustrative of defense counsel's tenacious adherence to technical arguments at the trial and in this Court. With this we pass it by.

Viewing the Case as a Whole.

The questions of construction that have been presented here may be summarized by saying that the alleged looseness of the Act, the regulations, and the form, is not sufficient to allow a willful evader to succeed in a technical claim that he has not been legally brought to task. The evidence presented against the defendant is strong and he has no quarrel with its sufficiency. His disputes with the evidence result from his interpretations on the questions of law. On the questions of law we hold that the trial court's constructions were correct. The asserted errors concerning the procedure at the trial either are nonexistent or appear small and nonprejudicial in their proper perspective. It is clear that we should affirm.

Affirmed.

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[20] *Id.* at 305-6.

[fol. 344] Monday, September 21st, A. D. 1942.

Before Honorable D. Lawrence Groner, Chief Justice, and Honorable Justin Miller and Fred M. Vinson, Associate Justices

No. 8204—April Term, 1942

GEORGE SYLVESTER VIERECK, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the District of Columbia

JUDGMENT

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be and the same is hereby affirmed.

Per Mr. Justice Vinson.

September 21, 1942.

[fol. 345] [Stamp:] United States Court of Appeals for the District of Columbia. Filed Sep. 25, 1942. Joseph W. Stewart, Clerk.

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 8205

GEORGE SYLVESTER VIERECK, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

DESIGNATION OF RECORD

Comes now the appellant by his undersigned attorney, and requests the Clerk of this Court to prepare and fur-

nish the record in this Court, duly certified, for use in applying to the Supreme Court of the United States for a writ of certiorari to review this case and to please include therein the following:

1. Appendix to appellant's brief in this Court
2. Minute entry of argument
3. Copy of the opinion of September 21, 1942 in the case
4. Copy of the judgment
5. This designation
6. Clerk's certificate

O. R. McGuire, O. W., Attorney for Appellant.

Service of a copy of the foregoing Designation of Record acknowledged this September 25, 1942.

Wendell Berge, Assistant Attorney General of the United States.

[fol. 346] UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia, hereby certify that the foregoing printed and typewritten pages numbered from 1 to 345, both inclusive, constitute a true copy of appendix to brief for appellant and proceedings in this court, as designated by counsel for appellant, in the case of: George Sylvester Viereck, Appellant, vs. United States of America, Appellee, No. 8204, April Term, 1942, as the same remain upon the fifiles and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 25th day of September, A. D. 1942.

Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia. (Seal.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 16, 1942

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted, except with respect to the first question presented by the petition.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

Office - Supreme Court, U. S.
FILED
OCT 15 1942
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term 1942.

No. 458

GEORGE SYLVESTER VIERECK,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION OF GEORGE SYLVESTER VIERECK FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

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IN THE

Supreme Court of the United States

No. .....

GEORGE SYLVESTER VIERECK,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION OF GEORGE SYLVESTER VIERECK FOR A WRIT OF CERTIORARI TO REVIEW A JUDGMENT ENTERED SEPTEMBER 21, 1942 BY THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AFFIRMING A SENTENCE OF CONVICTION ENTERED MARCH 13, 1942 BY THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA UNDER THREE COUNTS OF AN INDICTMENT CONTAINING FIVE COUNTS.

The Registrations.

This indictment recites in the first paragraph thereof (R-1) that it was brought by a Grand Jury during the October 1941 Term which had been duly empaneled, sworn and charged in the July 1941 Term of the District Court of the United States for the District of Columbia, and that not having completed its investigations begun in said term, it was continued in the October 1941 Term by order of the said court pursuant to Section 284, Judicial Code (28 U. S. C. 421), which is the statute applicable to United States District Courts generally. No reference was made to the fact that in the Act of March 3, 1901, Chap. 854 (31

Stat., 1222), as amended by the Act of April 19, 1920, Chap. 153 (41 Stat., 559), (Title 11, Section 1406, D. C. Code 1941 ed.), there are specific and restrictive limitations that the term of a Grand Jury in the criminal court in the District of Columbia "shall begin with each term of that court and shall end with such term, unless the jury shall be sooner discharged by the court."

The indictment is in five counts. Two of the counts, Nos. I and IV, were stricken out on demurrer (R-56). These two counts are respectively applicable to one original registration statement filed by petitioner as the agent of two foreign principals, and the other as agent of a third foreign principal (R.-20-26, 37-41).

The other three counts, Nos. II, III and V, under which petitioner was tried before a jury, convicted and sentenced, are respectively applicable to three supplemental registration statements filed by the petitioner as agent for two of the foreign principals during successive six months' periods following the filing of the original registration statement as agent for these two foreign principals (R-5-11, 15-19). No supplemental registration statement was filed by petitioner as agent for the third foreign principal because the first six months' period after filing the original registration statement had not elapsed when the indictment was returned.

The charge in each of the five counts of the indictment is that petitioner had "unlawfully, willfully, feloniously and knowingly" omitted to state "as part of his business and activities" for the respective periods of time stated in each count, certain activities also named in the respective five counts when he gave his answers to Paragraphs 11 of the two original registration statements and the three supplemental registration statements—on forms prescribed by the Secretary of State and furnished by him

to the petitioner—which required agents for foreign principals to give a:

> "Comprehensive statement of nature of business of registrant."

Petitioner answered in his original registration statement for the two foreign principals, in response to the aforesaid requirement in Paragraph 11 of the form, that he was an "Author and Journalist" (R-21). He answered in response to the identical requirement in the second original registration statement filed for the third foreign principal that he was an "Author, Editor and Publicist" (R-38), and it was established at the trial that for many years the petitioner had been a prolific writer of books and magazine articles (R-168-177). The contracts of employment by the two foreign principals, which were attached to the first original registration statement, showed that petitioner was to perform the work of a writer and author for the Munich newspaper (R-24-25) and for the German Library of Information (R-25-26). The latter contract was later revised to some extent (R-48-50). The contract of employment attached to the second original registration statement showed that petitioner was to have a book published for the third foreign principal (R-41).

The contracts between the German Library of Information and petitioner were terminated and cancelled by the parties on July 2, 1941 (R-52-53), and the Secretary of State so advised by petitioner in letter of July 16, 1941 (R-51). The contract with the Munich newspaper was cancelled and the Secretary of State so advised by petitioner in letter of September 8, 1941 (R-90). Thus, the agency relationship of petitioner had terminated long before Pearl Harbor and the declaration of war between the United States and the German Reich. The contract with the third foreign principal was completed by the publication of the book.

The three supplemental registration statements which were respectively the subject of Counts II, III and V of the indictment were filed within the appropriate time limits during the interval between the filing of the first original registration statement for the Munich newspaper and the German Library of Information and the cancellation of the agency relationships as above stated. Each of these supplemental registration forms contained printed instructions that if the answers to any of the paragraphs thereof, except paragraph 1, would be the same as answers made to similar questions in a previous registration statement filed with the Secretary of State, the word "same" could be used in replying to said paragraphs of the supplemental forms (R-27, 30-31, 44).

The petitioner used the word "same" in replying to Paragraphs 11 of the three supplemental forms, thus, in effect, stating in reply to the requirement that he give a "Comprehensive statement of nature of business of registrant" that he was an "Author and Journalist" (R-28, 31, 45). When he became obligated to the third principal to publish a book for such principal, petitioner answered Paragraph 11 of the registration statement for that agency with the words "Author, Editor and Publicist" (R-38), as above stated. The petitioner tendered proof, and the tender was rejected that out of approximately 560 registration statements on file in the State Department approximately 500 of such statements contained answers to paragraphs 11 thereof in the "same form and in the same manner that this defendant did" (R-180). While the State Department was not required to do so, at no time in the approximately 18 months while some of these statements by petitioners were on file and others were being filed did that Department even suggest to him that in its view his replies to paragraph 11 were not complete.

The first and second supplemental registration statements were subscribed to, and sworn to by petitioner before Notary Public Emil Morosini, Jr. (R-38, 34), and so was the original registration statement for the third foreign principal (R-41). The record shows that this Mr. Morosini was petitioner's chief trial counsel, and that at least one of the supplemental registration statements was forwarded by this attorney to the Secretary of State for filing (R-38-43, 87).

Upon conviction of petitioner by the jury for having failed in the three supplemental registration statements in answer to the requirement of Paragraphs 11 to give a "Comprehensive statement of nature of business of registrant" to state "as a part of his business and activities" the activities, or some of them charged in Counts II, III and V of the indictment, the District Court of the United States for the District of Colmubia, Letts, J., sentenced the petitioner on March 13, 1942 to imprisonment in a penitentiary for terms of 8 months to 2 years under each of the three counts, with the terms to run consecutively and not concurrently; to pay a fine of $500.00 under each of the three counts; and to pay the costs of the trial (R-325).

Notice of appeal was filed on the same day; application for bail was made and denied (R-323); the appeal was argued in the United States Court of Appeals for the District of Columbia on June 1, 1942 (R-319); and by a judgment dated September 21, 1942, the said Court affirmed the conviction and sentence (R-344).

This petition is for a writ of certiorari to review said judgment.

Opinion Below.

There was no opinion in this case in the District Court of the United States for the District of Columbia. The

opinion dated September 21, 1942 by the United States Court of Appeals has not been reported as yet, but it is contained in the Record at pages 320-343, inclusive.

Jurisdiction.

The jurisdiction of this Court for a writ of certiorari to review the judgment of September 21, 1942 by the United States Court of Appeals for the District of Columbia is invoked under Section 240 of the Judicial Code, as amended (28 U. S. C., 347). See also Rule XI of the Rules of Practice and Procedure in Criminal Cases, promulgated by this Court May 7, 1934.

Questions Presented.

1. Whether the entire indictment of petitioner is not a nullity, void and of no effect and the rights of the petitioner infringed under the Fifth Article in the Bill of Rights to the Constitution of the United States because the Grand Jury bringing in the indictment during the October 1941 Term of the District Court of the United States for the District of Columbia had been impaneled, sworn and charged in the July 1941 Term of said court and the said Grand Jury had been continued to sit during the October 1941 Term by order of said court pursuant to Section 284 of the Judicial Code (28 Stat. 421) applicable to United States District Courts generally while specific provision exists for the United States District Court for the District of Columbia in the Act of March 3, 1901, 31 Stat. 1222, as amended by the Act of April 19, 1920, 41 Stat., 559, (Tit. 11, Sec. 1403, D. C. Code, 1941 ed.) which states that the Grand Jury Term in the District of Columbia shall begin and end with each term of the Criminal

Court of said District of Columbia unless sooner discharged by the court.

2. Whether the rights of the petitioner have not been infringed under the Fifth and Sixth Articles in the Bill of Rights to the Constitution of the United States by the conviction and sentence of the petitioner under the Act of June 8, 1938, c. 327 (52 Stat. 631), as amended by the Act of August 7, 1939, c. 521 (53 Stat., 1244), and the supplemental registration forms issued by the Secretary of State thereunder which required in Paragraph 11 that the petitioner as registrant of a foreign principal give a: "Comprehensive statement of nature of business of registrant" and petitioner had answered in response thereto: "Author and Journalist."

3. Whether the petitioner by his answer: "Author and Journalist" to the requirement of Paragraphs 11 of the three supplemental registration forms which he filed requiring: "Comprehensive statement of nature of business of registrant" did not give a generic answer fairly and reasonably responsive to a requirement which was itself generic in character.

4. Whether the rights of the petitioner have not been infringed under the First Article in the Bill of Rights to the Constitution of the United States by the interpretation placed by the courts below on the aforesaid Act of June 8, 1938, as amended by the Act of August 7, 1939 that the petitioner in a time of peace, when the United States was not a belligerent, lost his freedom of speech and freedom of the press on his own behalf as an American citizen unless he reported to the Secretary of State his exercise thereof because he was during such time the registered agent of foreign principals.

5. Whether under the aforesaid Act of 1938 as amended by the Act of 1939 petitioner in response to Paragraphs

11 of the three supplemental forms issued by the Secretary of State requiring that a registrant for a foreign principal give a: "Comprehensive statement of nature of business of registrant" was required to report that he was engaged on his own behalf, and not on behalf of any foreign principal, in the activities, charged in Counts II, III and V of the indictment, intended by him to assist in maintaining the neutrality of the United States Government which was the declared policy of the Act of November 4, 1939, c. 2 (54 Stat., 4), (Tit. 22, Subchap. 2, Secs. 441-452, U. S. Code) until it was substantially repealed by the Act of November 17, 1941, c. 473, 55 Stat., 764.

6. Whether the language of the aforesaid Act of 1938 as amended by the Act of August 7, 1939, requiring the filing of supplemental registration statements on forms prescribed and issued by the Secretary of State and providing punishment for failure to state any material fact required by such form is not in conflict with the fundamental requirements of American criminal law that such statute must be definite and certain and must clearly state the standard of conduct, the violation of which constitutes a crime.

7. Whether if the aforesaid Act of 1938 as amended by the Act of 1939 as it related to, and required the filing of supplemental registration statements, on forms prescribed by the Secretary of State, was indefinite and uncertain and failed to clearly state a standard of conduct, the violation of which constituted a crime, such indefiniteness and uncertainty were removed and a definite standard of conduct prescribed by the Secretary of State in the supplemental registration forms and regulations which he issued under said Act as amended. If so, whether such defects in a criminal statute may be corrected by administrative regulations and forms.

8. Whether the constitutional rights of the petitioner were not impaired and infringed by the ruling of the trial court admitting in evidence against the petitioner on charges that he omitted to state "'as a part of his business and activities" in 1939 to 1941, certain activities in response to Paragraph 11 of the three supplemental registration forms requiring "Comprehensive statement of nature of business of registrant", a book which petitioner had published in 1930 describing propaganda activities of the English, French, German and United States Governments during a part or all of the first World War period from about 1913 to about 1919.

9. Whether in addition to a sentence of imprisonment and a fine under Section 5 of the aforesaid Act of June 8, 1938 imposed by the trial court on petitioner such court could add to the penalty the costs of the trial under the terms of a 1792 statute, 1 Stat. 277 (28 U. S. C. 822).

Statutes Involved.

The statutes directly involved are the Act of June 8, 1938, c. 327, (52 Stat., 631), and the amending Act of August 7, 1939, c. 521, (53 Stat., 1244), (22 U. S. C., 611-616). Also, involved is Public No. 532, 77th Congress, approved April 29, 1942, which covers the same subject matter and corrects the constitutional defects which petitioner believes existed in the two prior 1938 and 1939 statutes. These statutes have been printed in the appendix to the brief in support of this petition.

Statement of the Case.

The petitioner is an American citizen and has been such since the naturalization of his father in 1901 (R-22). His home is at 305 Riverside Drive, New York City (R-21). Prior to our entry into the War against Germany in 1917;

petitioner ~~was an employee of~~ worked with the German publicity staff in this country, but after we entered that war he assisted in Liberty Loan drives and received official thanks for "effectiveness of his patriotic advice" (Gov. Ex. 12, p. 167, being his book, *Spreading Germs of Hate*).

He is an author of considerable note, having written many books and magazine articles since at least 1907 (R-168). It was conceded by the chief prosecuting attorney that the "Government has never maintained anything other than this man was a prolific writer * * *. I am willing to concede that he wrote a lot of articles, or whatever the number is, for Liberty" (R-175).

The petitioner has not been charged with any crime *malum in se*. He has not been charged with any crime *malum prohibitum*. It is not claimed in the indictment, nor was it claimed by the prosecution at the trial of the petitioner, that any of his alleged activities, which he did not report in answer to Paragraphs 11 of the three supplemental registration statements, were in conflict with, or contrary to any law of the United States, or that any of them were critical of, or disloyal to the United States.

The alleged crime consists in the fact that he did not report "as a part of business and activities" the activities set forth in the three counts (Nos. II, III and V) of the indictment in response to the requirements in the said Paragraphs 11 of the three supplemental registration forms that he give a: "Comprehensive statement of nature of business of registrant."

Without repeating the statements contained in the first paragraphs of this petition (Pp. 1-5 herein) the original registration statement was filed with the Secretary of State on September 26, 1939 (R-20) as reporter and writer for the Munich newspaper—after inquiry by petitioner in letter of September 11, 1939 (R-78) of the State

Department whether in such capacity he should register as the agent of such foreign newspaper and after having been advised in the affirmative in reply of September 20, 1939 (R-79-80).

By letter of ~~September 28~~ October 7, 1939, the petitioner notified the Secretary of State of his contract with the Germany Library of Information and inclosed a copy, ~~in the German language~~. Receipt thereof ~~was acknowledged by the State Department in letter of September 30, 1939 with request for an English translation (R-80-81). Petitioner sent the English translation which~~ was acknowledged by the State Department in letter of October 2, 1939, with the statement that the contract had been filed with the registration statement as agent for the Munich newspaper (R-82) and it was so attached (R-25-26).

Within a period of six months and thirty days after the filing on September 26, 1939, of the original registration statement the petitioner was required to file his first supplemental registration statement, as provided in Section 2 of the amending Act of August 7, 1939. This supplemental registration statement was filed on or about April 26, 1940 (R-26-34). The second supplemental registration statement was filed within six months and thirty days thereafter, or on October 25, 1940 (R-30-34). The third registration statement was filed within six months and thirty days after the second one was filed, or on April 25, 1941 (R-44-47).

It is Paragraphs 11 of these three supplemental registration statements and certain alleged activities during the respective periods of time covered thereby which are the subject of the respective Counts II, III and V of the indictment (R-5, 7, 15).

Further, the period of time from September 26, 1939, when the first original registration statement was filed,

to April 25, 1941, when the third supplemental registration was filed, was covered by the Neutrality Act of November 4, 1939, c. 2 (54 Stat., 4), (22 U. S. C., 441-452), except for the short period from September 26 to November 3, 1939. During all of the period from September 26, 1939 to April 25, 1941, the United States Government was officially at peace with all nations, including the German Reich. This case thus should be viewed in the light of peace between the United States and the rest of the world and not in any war hysteria which came after the agency contracts were cancelled and our nation became a belligerent.

This Court will take judicial notice of the fact that during a part of this period from September 26, 1939, to April 25, 1941—covered by the three supplemental registration statements filed by petitioner—a political campaign was waged for the Presidency of the United States and that the candidates of both the two principal political parties advocated the keeping of the United States out of the war, then raging on three continents. It was not until the act of November 17, 1941, c. 473 (55 Stat., 764), that the Neutrality Act of November 4, 1939, was substantially repealed and until the Act of February 7, 1942, c. 46 (56 Stat., 82), that Lend-Lease Aid was provided for the Allied Nations. Petitioner's contracts were cancelled long before the declaration of war between the United States and Germany on December 8, 1941—the one with the German Library of information having been cancelled on July 2, 1941 (R-52-53) and the one with the Munich newspaper on September 8, 1941 (R-51).

It thus plainly appears from the record facts that the petitioner was not an agent for any German principal at the time the United States declared war on Germany and that save for the comparatively short period from September

26, 1939, to November 3, 1939, the agency was during a period covered by the Neutrality Act of November 4, 1939.

It having been conceded by the prosecuting attorney, as above stated, that petitioner was a prolific author and journalist (R-175) and it having been established by the evidence that such was the fact (R-168), it would seem to be clear that the petitioner was correct in stating that he was an "Author and Journalist" in replying to Paragraphs 11 of the three supplemental registration statement forms requiring a: "Comprehensive statement of nature of business of registrant."

Also, it would seem to be equally clear from the contract with the Munich newspaper, which was attached to the original registration statement (R-24-25), and from the first contract with the German Library of Information (R. 25-26), which the State Department attached to that registration statement (R-82), as well as the revision of the latter contract which was attached to the third registration statement filed April 25, 1941, (R-44-50) that the petitioner was employed strictly in his capacity as an author and journalist. This conclusion is supported by a letter of October 7, 1939, from petitioner to the State Department, or long before this indictment, wherein he stated, consistently with his contract with the German Library of Information, that:

> "I do not act as a Public Relations Counsel, as a press agent, or as a 'servant'. I do not edit the publication. I do not determine its policy. My job is merely that of a rewrite man on a newspaper. I revise material given to me and lick it into shape from the point of style and journalism" (R-83-84).

This conclusion is further supported by the settlement agreement of July 2, 1941, between the petitioner and the German Library of Information where it is stated that Viereck was being paid for his services as literary adviser for the said German Library of Information the sum of

$2500, as his salary for July, and was being allowed $7500 representing salary for three months additional by reason of the cancellation of the contract and was being paid certain extra items for writing a preface and editing a book on Social Security and Labor Legislation in Germany as well as reimbursement of two items paid to others for literary work which they performed for the said Library of Information (R-52-53). No evidence contrary to such conclusion was presented to the jury.

The contract between petitioner and the Munich newspaper shows that petitioner was to gather newspaper and other written material, which he might think of interest to said newspaper, and to write articles and to send both to the newspaper in Munich. The contract did not require the petitioner to publish or cause anything to be published in the United States for said newspaper (R-24-25). The Government did not establish, or attempt to establish in the trial that petitioner wrote for publication in the United States anything for said newspaper or that he had anything published in the United States for said newspaper or that any of his activities alleged in the indictment were for said newspaper.

So far, the evidence before the jury is entirely consistent with counsel for petitioner's theory of the case that petitioner was an "author and journalist"; that he was employed by the Munich newspaper and the German Library of Information as an author and journalist; that he performed for them the duties for which he was employed and these duties only; and that when asked in Paragraphs 11 of the three supplemental registration statement forms to give a "Comprehensive statement of nature of business of registrant" he correctly answered "Author and Journalist."

Fundamentally it may be accepted as a truism that "business" is "activity", the activity by which an income is

earned or attempted to be earned. Also, that not all "activity" is "business" because a man may be, for instance, a vestryman in a church which is an "activity" but certainly not a "business."

A vast amount of documentary evidence and testimony of witnesses was offered by the prosecution concerning certain alleged "activities" of the petitioner—but no evidence whatever was offered that such "activities" were the "business" of petitioner; that is, that he obtained a single dime therefor from any of his foreign principals or that he was acting as an agent for any of his foreign principals from which he received the compensation stipulated in his contracts for the performance of duties, or tasks, or activities different to those stated in said contracts.

Indeed, under the instructions of the trial court to the jury it was not necessary for the prosecution to have shown that in the performance of such duties petitioner was acting as the agent of any foreign principal or for the jury to find that he so acted. ~~Under such instructions, to which petitioner duly excepted, it was not necessary for the jury to find that he so acted.~~ Under such instructions, to which petitioner duly excepted, it was not necessary for the jury to find that he acted as the agent of any foreign principal (R-101-114).

Further the trial court rejected petitioner's prayer for an instruction which would have required the jury to find that in performing the activities alleged in the remaining three counts of the indictment the petitioner was acting as the agent of a foreign principal (R-96-101).

Under these instructions to the jury, it is not open to an appellate court to speculate, as was done by the court below in its opinion (R-322) that "The jury may have believed, however, that all or some of these activities were carried on by the defendant in his capacity as an agent for foreign

principals." Further, under such instructions, which told the jury, in effect, that it need not determine whether the alleged activities were or were not performed for a foreign principal; that it was sufficient to convict the petitioner if the jury found that he engaged in such activities (R-101-114); it is not open to an appellate court to state that: "There was much more evidence from which it could be inferred that defendant was carrying on his clandestine work in behalf of the foreign principals" (R-334).

The appellate court below refers to no direct evidence that was presented to the jury to the effect that petitioner was acting as the agent of any foreign principal in connection with the activities charged in the indictment. In fact, that court admitted in its opinion that: "The case was presented to the jury on the basis of a failure to disclose any political activity, it was a failure to disclose a part of his business" (R. 334). Again, "Under our construction of the Act it was necessary for the defendant to reveal these four kinds of political activity even if they were done entirely on his own (R-334). The court reached its "construction" by quoting Section 3(c) of the 1938 Act as amended by Section 2(c) of the 1939 Act and saying:

> "There might be some question as to whether in this provision the phrase 'as agent of a foreign principal' designates the type of activities or the class of persons. Defendant's arguments, based on the Act, did not raise the issue and as a result the Government's construction did not develop this possible point. As the 1938 Act is printed there is more difficulty of construction because such person(s) is in the plural.
>
> "If 'as agent' designates the activities, *i. e.*, a statement of the agent activities, it would have been better for 'agent' to be in proximity with 'activities'. If 'as agent' designates the class of persons, then it is somewhat redundant for it is abundantly clear who 'such persons' are, and grammatically it might have been well to introduce 'agent(s) of a foreign principal' with 'who are.'

"Since in the 1939 amendment 'person' is in the singular as is 'agent', and since it seems better construction of language to have 'as agent' designate the class of persons rather than the type of activities, we interpret the provision as follows: a statement of the activities of such person (an agent of a foreign principal) during such six months' period. This means that the phraseology is a little tautological, but we assume that is the result of seeking clarity, and in our view the redundancy being slight, a strained construction to avoid it is not justified. Thus we conclude that subsection 3(c) authorizes the Secretary to require a statement of all activities (at least the political kind with which we are concerned) of a registrant" (R-324).

The petitioner takes sharp issue with such judicial rewriting of the amended subsection 3(c) of the Act and insists that if such rewriting is necessary to clarify the statute, it alone, is sufficient to establish the indefiniteness and uncertainty of said amended subsection 3(c) which requires that in the supplemental registration statement the Secretary of State may require, on a form prescribed by him, among other things:

"(c) A statement containing such details required under this act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period."

The Secretary prescribed in Paragraphs 11 of the supplemental registration forms that he wanted a "Comprehensive statement of nature of business of registrant"—*nothing whatever about activities which were not the nature of his business as agent of a foreign principal.* The Secretary was not authorized by said subsection to call for all the activities of an agent but only for his activities "as agent for a foreign principal." The petitioner could not rewrite the amended subsection 3(c) as the court below has done. He had to take both the said subsection and Paragraph 11 of the form as he found them and then attempt to answer the said paragraph.

Having judicially rewritten the statute, as shown by the above quotation from the opinion, the court stated therein that:

> "defendant's business on which evidence was taken and which he did not disclose over the 18 months' period may be put into four classifications: (1) his direction and control of Flanders Hall, a publishing institution, interested in political subjects; (2) his organization of, and activities in behalf of, Make Europe Pay War Debts, Islands for War Debts, and possibly War Debts Defense, Committees, all with a political twang; (3) his work in helping a late Senator prepare his expression of views on political topics; (4) his assistance in disseminating political views of Congressmen coinciding with his own, or coinciding with, or at least of no hindrance to, those of his foreign principals from whom he was receiving a large income" (R-328).

Petitioner accepts the four classifications, but not the characterizations made by the court below of any of them. Voluminous documentary evidence and much testimony was introduced by the prosecuting attorney as to each of these four classifications, interspersed with his reading to the jury of isolated sentences and paragraphs from petitioner's book, *Spreading Germs of Hate* which was published in 1930 concerning propaganda by the British, French, Germans, and Americans during the period from about 1914 to about 1919 (R—132, 133, 134, 138, 156-159), and which was admitted in evidence over the objections of petitioner (R-123).

Taking up each of the four classifications, briefly, petitioner loaned some $22,500 to Flanders Hall under a written agreement of August 3, 1940, which reserved to petitioner the veto power over any proposed commitment or expenditure by the corporation (R-249-251). Government witness Hauck admitted under cross-examination that petitioner loaned the money, with right to purchase control of the company and that he had "repeatedly said that he ex-

pected his publishing house, if he started a new one, or if he became more active in Flanders Hall, that it had a good chance of growing into a prominent publishing house in the future" (R-252). This witness, upon re-direct, testified that he believed a commercial publishing house could be built out of his company, Flanders Hall (R-252).

This company published several booklets, or books, from manuscripts furnished or obtained by petitioner but it was a losing venture because few of the books could be sold. Petitioner was finally repaid by Flanders Hall $3500 at one time and $1000 at another (R-256-257). This is not the first instance of a "shoemaker failing to stick to his last" but the money was petitioner's money and no evidence whatever was offered by the prosecution that a dime of it came from any of his foreign principals or that in making the loan petitioner was acting for any foreign principal.

It is conceded by counsel for petitioner that some of the booklets should not have been published under the names of fictitious authors or that there should have been any attempt to conceal the source of their texts, as condemned by the court below. However much this may have violated high standards of ethics and morals, it certainly was not a crime for which the petitioner could be convicted under the indictment and the statute.

While the prosecution did not offer any evidence to that effect, and the petitioner was not permitted by the rulings of the trial court to do so (R-188-195), it is nevertheless a matter of common knowledge, of which this Court may take judicial notice, that there were individuals, groups, and committees—one of the latter being headed by a distinguished and patriotic man high in public office—which were actively and vigorously—through full page advertisements in the press and otherwise—urging that the United

States defend itself by aiding the Allies. They, too, were American citizens and it was just as legitimate and proper for those opposed to such course of action, including the petitioner, to oppose it at the bar of public opinion.

As a legitimate argument in support of such opposition, they could properly show how England had governed subject peoples in Egypt, India, and elsewhere and they also could show the condition of the poorer people in England itself. In general, such an attempt at making the showing was the theme of the booklets printed by Flanders Hall for sale to the American public.

No evidence was offered by the prosecution to show that the subject matter of any of the booklets was false. Publications under fictitious names is not unusual. It was testified at the trial by the executive editor of *Liberty* magazine that:

> "It is a very common custom when people write on subjects a little out of their line, or when they write a great deal, to avoid having their own name appear too monotonously, they use another name. It is very common practice" (R-174-175).

The court below complained that the correct source of the booklets had not been shown (R-330). It is not reasonable to suppose that such material as was contained in these booklets could have been obtained from English sources, in the form most effective for use in opposing the position taken by other groups, that the United States become an active participant in the war on the side of England. So far as this indictment is concerned, the source material for the booklets could have been taken from any source. Such taking would not constitute a crime under the 1938 Act as amended.

As to the organization by petitioner of the War Debts Committees named in the above extract from the opinion, the only evidence introduced by the prosecution that peti-

tioner had anything to do with such organization is the testimony of a minor clerk employed by one of the Committees to address envelopes bearing Congressional franks and containing printed extracts from the Congressional Record. She did not testify that she had ever seen the organization papers for these committees or that she had any personal knowledge that petitioner had organized the Committee. Her testimony on that phase of the matter is that the petitioner told her in his apartment in New York City, in the presence of her husband, who was also employed by the Committee, that he, the petitioner, and three other named persons "had organized the 'Make Europe Pay War Debts Committee'." Her husband's testimony is in conflict with her testimony on this point. He testified that petitioner "told us, rather, that Senator Lundeen, Linn Gale, and Prescott Dennett had formed the Committee, and to the best of my knowledge, Mr. Viereck said that it was his idea." This testimony of both witnesses is in the record (R-288). These witnesses also testified that they had seen petitioner at the Washington office of the Committee and that Mr. Dennett had talked with petitioner and had sent petitioner a box of papers. Also that petitioner complained about the box being sent to him (R-141-149).

This evidence, in the judgment of petitioner, does not establish that petitioner "organized" any one of the War Debt Committees, much less all of them nor that petitioner's interest therein was for his foreign principals. No connection whatever between these Committees and any foreign principal or between petitioner and any foreign principal concerning these Committees was shown or attempted to be shown by the prosecution to the jury. There was a good reason why this was not done. There was no such evidence.

Again, it was legitimate argument for those who were opposed to the United States being involved in the war on

the side of England to show that England had welshed on her debts to the United States for a large part of the moneys loaned by our Government to England during the first World War and for supplies furnished her, both the money and the supplies being furnished by the United States to England after our Government became her ally in that war.

With respect to petitioner's activities 3 and 4, as summarized by the court below, again there was no showing that petitioner engaged therein for and in behalf of any foreign principal or that such activities were his business, or even a part of his business from which he derived or expected to derive an income. The Senator and Congressmen held views similar to those of petitioner, that the United States should remain neutral, in accordance with the Neutrality Act of November 4, 1939. Their views had been and were being stated on the floors of Congress in the form of speeches and in material from publications which were reprinted in the Congressional Record. No evidence was presented by the prosecution that any of these speeches and other material was disloyal or hostile to the United States Government. Likewise no evidence was presented, that petitioner's activities with respect to disseminating such views in the form of reprints from the Congressional Record were for his foreign principals or that he received one dime therefor.

In fact, in only one case; that of mailing reprints from the Congressional Record of an address by Senator Lundeen, was it established by the evidence that petitioner had any direct part in such mailing out of the addresses and other material reprinted from the Congressional Record. In that instance he spoke with one Hill, a clerk in a Congressman's office, about mailing out the address. Hill engaged in such work for hire in his off-duty hours. This conversation fol-

lowed one between the Senator and the clerk on the same subject (R-279-283). Some of the testimony of this clerk who had been convicted of perjury is contradicted by the testimony of the Congressman in whose office he worked (R-283-286).

Whatever may have been the details of this conversation, the substance of the testimony is that petitioner did contact this clerk, stated that he was only an intermediary for Senator Lundeen, and that the clerk should look to the Senator for the details of mailing the copies and for payment for the work. There was much testimony by this clerk Hill as to other reprints from the Congressional Record which he purchased and mailed out, but no evidence that a single dime of the money came from either petitioner or his foreign principals. There was also testimony by the witnesses Webbers as to reprints being mailed out by the War Debts Committee but again there was no evidence that a single dime of the cost was paid by the petitioner or by his foreign principals or that petitioner authorized or instructed such reprints to be mailed.

The petitioner tendered proof, which was rejected, both as to the common practice of obtaining reprints from the Congressional Record and the number of reprints of addresses or material inserted in the Congressional record by interventionist members of the Senate and House of Representatives which had been obtained from the Government Printing Office (R-195-199).

There was nothing sinister and improper in obtaining reprints from the Congressional Record and mailing them by both interventionists and non-interventionists to prospective readers. Ours is a Republican form of Government, wherein the people rule through their elected representatives. Discussion pro and con of public questions is not only healthy in such a form of Government but it is absolutely necessary if the people are to intelligently act. The people in the United States are not required to vote *Ja.*

Petitioner happened to take what became the losing side of the great issue, as he had taken before in the first World War. Is he for that matter to be severely punished by confinement in a penitentiary from two to six years, be required to pay a heavy fine, and the costs of his trial while those on the winning side of the argument are honored? If so, this Democracy has never so functioned in more than 150 years of its history!

The petitioner is in sharp disagreement with the statement in the opinion below that there "was much more evidence from which it could be inferred that defendant was carrying on his clandestine activities in behalf of his foreign principals" (R-334). The opinion does not indicate any such evidence in the record a basis for such statement.

The activities were not "clandestine" in any respect whatever, unless they were made so by the failure of petitioner to report them in response to paragraph 11 of his supplemental registration statements as a part of the nature of his business. And he was legally required to do so.

The petitioner publicly went to Senator Lundeen's office, during regular working hours, when all could see who were interested therein. In the same manner he went to Congressman Fish's office and to the office of the War Debts Committee and to all other places. Certainly it has not been proven that he went to these places in a clandestine manner in the dead of night. There was not even an attempt to prove such a course of conduct in a single instance on the part of petitioner. Nor is there any evidence, as repeatedly stated, that any of these activities were carried on for any foreign principals. As the court below stated in its opinion, the prosecution did not present the case to the jury on the theory that in performing these activities the petitioner was acting as the agent of any foreign principal. "The case was presented to the jury on the basis of

a failure to disclose all of registrant's business" (R-334). Petitioner insists that he was not requested to disclose all of his business, but only to furnish a comprehensive statement of the nature of his business and that these activities did not constitute his business—any more than the activities constituted the business of those who were on the other side of the controversy as to whether the United States should join in the war!

The misconduct of prosecutor Maloney in the trial is shown by the record (R-122-133-134, 138, 150-151, 155-159, 161-162, 142, 146). The court below stated as to him: "We believe that many of the statements were improper"; "to be unnecessary stage play on the part of the prosecutor" (R-341) and that "some of the conduct of the prosecutor involved was not exemplary, particularly in view of his office" (R-340). The court, however, stated that part of this was due to the behavior of defense counsel and that as to the closing remarks of the prosecutor to the jury, the petitioner's counsel did not object at the time they were made and until after the noon recess (R-341).

During the course of the evidence for the defense, the Chief Defense Counsel, Mr. Morosini, who had conducted by far the larger part of the defense, became exasperated and there occurred the colloquy in the presence of the jury which is quoted by the court below on pages 20 and 21 of its opinion (R-339-340). This Chief Defense Counsel rested his case. This happened immediately before the noon recess and when the court reconvened, it called Mr. Morosini to the bench and directed him to no longer participate in the case. It was after this that there was failure of the other trial attorney to object to the highly inflammatory closing argument of the chief prosecutor until after the court had commenced his instructions to the jury, which the

trial court held to be too late and which holding the court below refused to disturb.

By way of summary of this statement, it is believed that the record fairly shows that petitioner was employed from July 20, 1939, to September 8, 1941, by the Munich newspaper and from September 27, 1939, to July 2, 1941, by the German Library of Information in his capacity as an author and journalist; that these facts were fully and completely shown to the State Department in his original registration statement, in the three supplemental registration statements, and in his subsequent letters giving notifications of the termination of such contracts; that there is no evidence whatever that he performed for these two foreign principals any duties, activities, or business except as editor and journalist as covered by these documents filed with the State Department.

Also, it is believed that something sinister was thought in the courts below to have been attached to petitioner's voluntary, unpaid, and personal activities in trying to keep the United States neutral in accordance with the Neutrality Act of November 4, 1939; that apparently this thought is due to the fact that over the period of his employment by these foreign principals he received under his contracts of employment and for the services set forth therein and for some extra editorial work what may seem to some as a large aggregate sum of money, namely "something like $65,000" (R-332), but against which he had to charge certain clerical and other office expenses, the exact amount not being shown in the record; that in the trial, which took place after the United States entered the war, sinisterism was deliberately fostered and encouraged by the prosecuting attorney's use of petitioner's book on propaganda in the first World war; and that petitioner's conviction and sentence as well as its affirmance have been based on some in-

ferences that his efforts on his own behalf to keep the United States out of the war and to continue it neutral were because of the fact that he was employed by the two foreign principals and for the benefit of the German Reich and its allies—and this without there being any evidence from which it could be reasonably concluded that these activities were other than on behalf of petitioner and without any profit therefrom.

If the Act of 1938 as amended in 1939 and the supplemental registration forms or either of them had required that the petitioner report his activities, whether or not on behalf of his foreign principals, he could have so reported.

Specification of Error to be Urged.

The Court below erred in failing to hold:

(1) That the District Court of the United States for the District of Columbia erred in not sustaining the demurrer to the entire indictment of five counts instead of Counts I and IV thereof, only, because:

(a) The indictment shows on its face, in the first paragraph thereof, that it was brought in by a Grand Jury in the October 1941 Term of the said court and which Grand Jury had been impaneled, sworn and charged during the July 1941 Term of said court and by order of that court authorized to sit at the October 1941 Term contrary to the Act of March 3, 1901, c. 854, Sec. 203, 31 Stat., 1222 (Tit. 11, Sec. 1403, D. C. Code, 1941 ed.), and which indictment is consequently a nullity.[1]

(b) The indictment shows on its face that the alleged crime of omitting to state in answer to Paragraphs

[1] This error was not urged in the courts below, though the point appears to be jurisdictional, because it did not then come to the attention of counsel for the petitioners that specific statutes governed the term of Grand Juries in the District of Columbia criminal courts and that the general statute applicable to the terms of Grand Juries in the district courts outside of the District of Columbia are not applicable to the terms of Grand Juries in the District of Columbia.

11 of the registration forms prescribed by the Secretary of State "as a part of his business and activities" the activities charged in Counts II, III and V of the indictment is not a failure to state a material fact or facts required by Section 3 of the Act of June 8, 1938 c. 327, (52 Stat., 631) as amended by Section 2 of the Act of August 7, 1939, c. 521, (53 Stat., 1244) (22 U. S. C. 611-616), or by said Paragraph 11 of the supplemental registration forms or by the regulations issued by the Secretary of State to be stated in answer to said paragraph.

(c) The Paragraph 11 of the supplemental registration forms prescribed by the Secretary of State, requiring a "Comprehensive statement of nature of business of registrant," was not in accordance with the aforesaid Section 3 of the Act of June 8, 1938, as amended by Section 2 of the Act of August 7, 1939.

(d) The petitioner having answered Paragraph 11 of the supplemental registration statements with the words "Author and Journalist," fully complied therewith.

(e) The Secretary of State having been authorized to fix in supplemental registration statement forms prescribed by him the details required under the statute of registrant's activities "as agent of a foreign principal" during the preceding six months' period did not fix any details of such activities in Paragraph 11 of the supplemental registration form, but instead used the language which he did therein and petitioner complied therewith.

(f) Section 5 of the Act of June 8, 1938, (22 U. S. C. 615) is indefinite, uncertain, and fixes no definite standard of conduct, the violation of which constitutes a crime, thereby infringing the petitioner's rights under the Fifth and Sixth Articles in the Bill of Rights to the Constitution of the United States.

(2) That the District Court of the United States for the District of Columbia erred in not granting the motions to dismiss the balance of the indictment (Counts II, III and V) which were submitted at the commencement of the trial and renewed at the conclusion of all evidence in the case for the reasons it erred in not sustaining the demurrer to the whole of the indictment.

(3) That the aforesaid District Court of the United States for the District of Columbia erred:

(a) In admitting in evidence, over objections of petitioner, the book, "Spreading Germs of Hate" and in permitting the use thereafter made of it before the jury by the prosecuting attorney also over objections of the petitioner.

(b) In granting as instructions to the jury the prosecution's prayers Nos. 2A, 2 and 8 and in not granting petitioner's prayer No. 19, the latter sharply raising the issue that petitioner could not be convicted under the indictment unless the jury found that the activities, or some of them, charged in Counts II, III and V of the indictment were ones in which he engaged "as agent of a foreign principal during" the preceding six months' period and that such omitted facts were material ones required to be reported by Section 2 of the Act of June 8, 1938, and the supplemental registration forms.

(c) In referring to, and quoting from a House of Representative Committee report in his general charge to the jury with respect to the requirements placed by law on registrants of foreign principals in filing supplemental registration statements.

(d) In permitting in the presence of the jury the misconduct of the prosecuting attorney and in not instructing the jury to disregard such misconduct, particularly the inflammatory closing argument of such attorney for the Government.

(4) The court below further erred in not holding that the trial court erred in adding in his sentence of petitioner to the penalties imposed by Section 5 of the unamended Act of June 8, 1938 a further penalty of the costs of the trial not imposed by said section.

Reasons for Granting the Writ.

1. The issues involved in the registration of agents of foreign principals, including their filing of supplemental

registration statements are of great public importance which have not been, but which should be settled by this Court.

2. While the Act for the Registration of Agents for Foreign Principals approved June 8, 1938, as amended by the Act of August 7, 1939 (22 U. S. C. 611-616), under which petitioner was indicted, convicted and sentenced, has been superseded by the New Act approved April 29, 1942, Public No. 532, the construction placed by the court below on the said Acts of 1938 as amended by the Act of 1939, affects the construction of the New Act of 1942, which Act petitioner claims meets the constitutional and other defects in the prior Acts of 1938 and 1939, and the supplemental registration forms and regulations issued thereunder by the Secretary of State.

3. The construction placed by the courts below on Section 3 of the Act of June 8, 1938 as amended by Section 2 of the Act of August 7, 1939, on the new Act of 1942, Paragraph 11 of the supplemental registration forms and on the regulations issued by the Secretary of State is probably untenable and involves a question of substance relating to the application of a statute of the United States which has not been, but which should be settled by this court.

4. The holding by the court below that the Act of June 8, 1938, as amended by the Act of August 7, 1939, that fails to state what shall constitute a material fact which, if omitted from Paragraph 11 of the supplemental registration form, shall constitute a crime punishable severely by fine and imprisonment is indefinite, uncertain, and fixes no standard of conduct, the violation of which shall constitute a crime, is in conflict with applicable decisions of this court. *United States v. Cohen Grocery Company*, 255 U. S. 81.

Lanzetta v. New Jersey, 306 U. S. 451.
Gorin v. United States, 312 U. S. 19.
United States v. Wurzback, 280 U. S. 396.
United States v. Capital Traction Company, 34 App. D. C. 592.
Czarra v. Board of Medical Examiners, 25 App. D. C. 443.

5. The holding of the court below that "The spirit of the Act required defendant to detail his disclosure more than he did" (R-331) and that "Merely giving the most generic terms possible in describing the nature of registrant's business is not, we believe, a compliance with the spirit of the Act" (R-329) and not relying upon the letter of this criminal statute for its conclusion that petitioner was required to report all of his activities, whether or not they were on his own behalf—when coupled with the judicial rewriting in the opinion of subsection 3(c) of the Act (p. 5 opinion), upon which the court correctly states "this indictment is based"—is in conflict with the fundamental bases of construction of criminal statutes and in conflict with decisions of this court.

An alleged crime may be within the letter of a statute but not within the spirit thereof and in that event the alleged offender is permitted to go free. See *Church of the Holy Trinity v. United States*, 143 U. S. 226, 232, and cases there cited.

The converse thereof is not true that an alleged crime may be within the spirit of a statute but not within the letter thereof and the alleged offender convicted and subjected to heavy penalties.

This was the English doctrine of constructive crimes and the entrapment of innocent persons by vague penal laws through the medium of judicial interpretation to which Edward Livingston referred (Vol. 1, pp. 12, 170, Chase's edition, 1873, Works of Edward Livingston on Criminal Jurisprudence) as follows:

"This dreadful list (of offenses) was increased by the legislation of the judges, who declared acts which

were not criminal under the letter of the law, to be punished by virtue of its spirit. The statute gave the text, and the tribunal wrote the commentary in letters of blood; and extended its penalties by the creation of constructive offenses. * * * What the law forbids, is an offense; but the law cannot forbid without being perfectly intelligible. * * * An ambiguous penal law is no law, and judicial decision cannot explain it without usurping authority which does not belong to them."

"Where the charge is of crime it must have clear legislative basis"—*United States v. George*, 228 U. S. 14,22.

"Our concern is not with the power of Congress but with the proper interpretation of action taken by it. This must be ascertained in view of the settled rule that 'there can be no constructive offenses, and before a man can be punished his case plainly and unmistakably within the statute' *(United States v. Lacher*, 134 U. S. 624, 628)."—*United States v. Bathgate* and others, 220 U. S. 220, 225.

"The words of the Act suggests no intention to include the obtaining of money by threats. There are no constructive offenses; and before one can be punished, it must be shown his case is plainly within the statute. *United States v. Lacher*, 134 U. S. 624, 628."—*Fasulo v. United States*, 272 U. S. 620, 629.

"We recognize the value of the rule of construing statutes with reference to the evil they were designed to suppress as an important aid in ascertaining the meaning of language in them which is ambiguous and equally susceptible of conflicting constructions. But this court has repeatedly held that this rule does not apply to instances which are not embraced in the language employed in the statute, or implied from a fair interpretation of its context, even though they may involve the same mischief which the statute was designed to suppress."—*United States v. Chase*, 135 U. S. 255.

6. The court below concedes that "some of the conduct of the prosecutor was not exemplary, particularly in view

of his office"; "that many of the statements were improper" which he made; "Most of the worst examples of inflammatory remarks, however, came in the closing argument, to which no objection was made until far too late"; that a certain named incident "appears to us unnecessary stage business on the part of the prosecutor"; but concludes that a "careful study of the record shows that although some of the remarks of the prosecutor were improper, on the whole it cannot be said that there was prejudicial error." The court also stated that part of this misconduct "in turn was due to the behavior of defense counsel" (R. 340-341). The record is sufficient reply to the latter statement (R. 155-159, 161-162, 133-138). In concluding that such misconduct did not constitute prejudicial error the court failed to give effect to decisions of this Court.

Berger v. United States, 295 U. S. 78, 84.

Hall v. United States, 150 U. S. 76, 92.

This same prosecuting attorney's conduct was condemned in *United States v. Buckner*, 108 Fed. (2nd) 921 and *United States v. Dubrin*, 93 Fed. (2nd) 499, though the judgments were not reversed because thereof.

7. The court below in failing to hold that reversible error was committed by the ruling of the trial court excluding the chief defense counsel from the case at the crucial point of preparing and submitting prayers for instruction to the jury, excepting to prosecution prayers which the court granted, and in making summation of the petitioner's case to the jury failed to give effect to decisions of this Court that a defendant is entitled in a criminal case to counsel of his own choice and that he cannot be constitutionally deprived of such counsel of his own choice.

Glasser v. United States, 86 U. S. Law ed. 405, No. 32, Adv. Ops. Oct. Term 1941.

Johnson v. Zerbst, 304 U. S. 485.

See also Tit. 11, Sec. 1302, D. C. Code, 1941 ed., for proper disciplinary procedure of attorneys in the District of Columbia Courts.

8. The question whether a defendant convicted of a crime, not involving a fine or forfeiture under the fiscal laws of the United States, may be sentenced to imprisonment and fine and to payment of the costs of the trial under a statute which provides for penalties of imprisonment and/or fine, only, appears not to have been, but should be settled by this Court.

Re Swan, 150 U. S. 637 left the question undecided.

Oates v. United States, 233 Fed. 201, 207, was a sentence in contempt proceedings of imprisonment and costs of the trial under Section 268 Judicial Code (28 U. S. C. 385) which authorized fine or imprisonment as punishment. Other questions were involved and this Court denied certiorari in 242 U. S. 633.

Whitworth v. United States, 114 Fed. 302, was a sentence of imprisonment and fine and costs of the trial for embezzling funds of the United States. Section 4046, Revised Statutes (Tit. 18 U. S. C. 355) authorized punishment of imprisonment or fine equal to the amount of money embezzled or both. The court reversed the sentence (pp. 304-305) because imposition of the additional penalty of costs of the trial was not authorized. Some time later, the court appended what appears to be an *ex parte* statement at the foot of the opinion to the effect that its attention had not been invited to Section 974, Revised Statutes (Tit. 28, Sec. 822 U. S. C.) originating in Section 5 of the Act of May 8, 1792. 1 Stat. 277, and that said court was wrong in its opinion.

Respectfully submitted,

O. R. McGUIRE,
Attorney for Petitioner.

BRIEF IN SUPPORT OF THE PETITION.

The Facts.

Petitioner relies upon the facts as summarized in the petition herein and due to the necessary length of the petition so as to include what are believed to be the basic facts to properly inform the court, additional facts will not be restated in this brief except to the extent absolutely necessary to the argument on the law.

ARGUMENT.

I.

THE INDICTMENT UNDER WHICH PETITIONER WAS TRIED IS A NULLITY, VOID AND OF NO EFFECT AS SHOWN ON THE FACE THEREOF. THE ENTIRE PROCEEDINGS THEREUNDER WERE IN VIOLATION OF PETITIONER'S RIGHTS UNDER THE FIFTH ARTICLE IN THE BILL OF RIGHTS TO THE CONSTITUTION.

The attempt by the District Court of the United States for the District of Columbia to extend the term of the Grand Jury impaneled, sworn and charged at the July, 1941, Term of that court to the October, 1941 Term was in direct conflict with the Act of March 3, 1901, c. 854, (31 Stat. 1222) as amended by the Act of April 19, 1920, c. 153, (41 Stat. 559), (Tit. 11, Sec. 1406 D. C. Code, 1941 ed.) which, as contained in the District of Columbia Code of Laws, is as follows:

> "*The term of service of the grand jury in the criminal court shall begin with each term of that court and shall end with such term, unless the jury shall be sooner discharged by the court.* The foreman of the grand jury shall be selected by the justice presiding over the special term known as criminal division number one from among the jurors, grand and petit, in attendance upon the District Court of the United States for the District of Columbia; and, in the event that said foreman is not

selected from among the twenty-three grand jurors in attendance, but is selected from among the petit jurors, one of the said grand jurors shall be excused as such and transferred to the roll of petit jurors, and the term of service of the foreman so selected of the grand jury shall be concurrent with the term of service of the grand jury." (Italics supplied.)

Rule 2 of the Rules of the District Court of the United States for the District of Columbia (adopted June 26, 1941) provides that:

"TERMS. Terms of the general term and of each division of the court shall begin on the first Tuesday of January, April, July and October, except it be a legal holiday, when the term shall begin the following business day."

The Act of May 19, 1922, c. 194 (42 Stat., 543) (as carried into Tit. 11, Sec. 1408, D. C. Code, 1941 ed.) after *providing procedure for ordering an additional grand* jury in the United States District Court for the District of Columbia further provides as to such grand jury that:

"* * * unless sooner discharged by order of said chief justice, or, in his absence, senior associate justice, said additional grand jury shall serve during and until the end of the term in and for which it shall have been drawn."

It thus seems clear from the terms of the Federal statutes exclusively applicable to the District Court of the United States for the District of Columbia that the term of any grand jury and of any additional grand jury impaneled, sworn and charged at the July 1941 Term of that Court automatically and unqualifiedly ended and ceased to exist at the end of that term and that such term of the grand jury could not be extended so that it could legally sit in the October 1941 Term of that court. This conclusion is reinforced by another provision of the District of Columbia Code (Tit. 23, Sec. 104, 1941 ed.) which provided that if any person charged with a criminal offense shall have been

committed or held to bail to await the action of a grand jury, and within nine months thereafter the grand jury shall not have taken action on the case, the United States District Court for the District of Columbia, holding a special term as a criminal court (established by Tit. 11, Sec. 311, D. C. Code, 1941 ed.):

> "* * * may from time to time enlarge the time for taking action in such case by the grand jury."

While the trial court below could, as thus provided, "enlarge the time" for a grand jury to take action, it could do so only where the party accused was on bail or committed and could not extend a grand jury from one term to another.

The indictment against petitioner was filed October 8, 1941 (R-319). He was not placed on bail until October 10, 1941 (R-319). He had not been committed or arrested before indictment. Consequently he had to be indicted by the grand jury impaneled, sworn and charged at the July 1941 Term or by another grand jury at its October 1941 Term, selected in accordance with law (Tit. 11, Sec. 1407, D. C. Code, 1941 ed.). Therefore the indictment by a so-called grand jury in the October 1941 Term of the court which had been ordered by the court below, in the teeth of the above referred to District of Columbia statutes, to sit in that term was no indictment at all; such so-called indictment was a complete nullity and the trial of petitioner thereunder was in violation of his rights under the Fifth and Sixth Articles in the Bill of Rights to the Constitution of the United States. The grand jury being not for the term of court at which the indictment was found, and contrary to the statutes was neither a *de jure* nor a *de facto* grand jury. The indictment is *coram non judice*. *United States v. Gale*, 109 U. S. 65.

This indictment of petitioner recites on its face that it was brought in by a jury duly impaneled, charged and sworn at the July 1941 Term of the trial court and that by

order of said court "pursuant to the provisions of Section 284 of the Judicial Code as amended (28 U. S. C. 421) authorized to continue to sit at the October 1941 Criminal term of said court" (R-1). But the trial court had no authority whatever under the cited Section 284 of the Judicial Code which is not in terms applicable to the courts of the District of Columbia.

This Section 284 of the Judicial Code of 1911, came from Section 810, Revised Statutes, which, in turn, originated with the Act of September 24, 1789, c. 20, (1 Stat. 88), as amended. Thus the origin of the District of Columbia Code provisions, as to the term of a grand jury, as above quoted, is entirely separate and distinct from the origin of Section 284 of the Judicial Code, applicable to district courts of the United States outside of the District of Columbia. The correct interpretation in this respect is settled by Tit. 49 Sec. 301, D. C. Code, 1941 ed. The provisions of the District of Columbia Code specifically applicable to the said District of Columbia control rather than the terms of the Judicial Code of 1911, generally applicable to the district courts of the United States.

United States v. Burroughs, 289 U. S. 159
Johnson v. United States, 225 U. S. 405
Winston v. United States, 172 U. S. 303
Clark v. United States, 19 App. D. C. 295
O'Brien v. United States, 69 App. D. C., 99 Fed. (2nd), 368, certiorari denied, 305 U. S. 562.
Kleindienst v. United States, 48 App. D. C. 190
Behrle v. United States, 69 Apps. D. C. 304, 100 Fed. (2nd) 714.
Act of June 25, 1936, c. 804, 49 Stat. 1921.

The demurrer (R-53-56) searched the entire indictment. While it appeared on the face of the indictment that it had been brought in by a grand jury in the October 1941 Term, which had been impaneled to sit in its July 1941 Term, and

that such order had been issued under Section 284 Judicial Code, it did not come to the attention of trial counsel that specific provisions of the District of Columbia Code limited the grand jury term to the term of the criminal court in which the grand jury had been impaneled. Also this fact did not come to the attention of present counsel when the case was presented to the court below.

However, the nullity of the indictment may be raised at any time. This Court, unanimously speaking through Mr. Justice Bradley in *United States v. Gale*, 109 U. S. 65, stated that while certain objections should be taken in regular order and due course of proceedings:

> "There are cases undoubtedly, which admit of a different conclusion, and in which the objection to the grand jury may be taken at any time. These are cases where the whole proceedings of forming the panel is void; as where the jury is not a jury of the court or term in which the indictment is found * * * or where some other fundamental has not been complied with."

Also, it was stated further along in this opinion that:

> "In Hardin's case, 2 Rich. 533, the motion in arrest of judgment was based on the ground that the grand jury was not such at the term at which the bill was found and, of course, the proceedings were *coram non judice*. We think that the doctrine of waiver applies as well to cases of the objections to the qualifications of jurors, and to the mode of impaneling the jury; but does not apply to cases where the proceeding is wholly void by reason of some fundamental defect or vice therein."

There were undoubtedly good and sufficient reasons why the Congress made a distinction in the law as between the District of Columbia criminal courts, sitting in the political Capitol of the Nation, and the United States District Courts outside of said District of Columbia with respect to the possible period during which grand juries in the respective jurisdictions should be permitted to sit. But whatever may have been the reasons for the distinction, it has been made

in the statutes and we submit that this indictment is wholly void and that the trial, conviction and sentence of petitioner thereunder was in violation of his rights under the Fifth Article in the Bill of Rights to the Constitution of the United States.

II.

SECTION 5 OF THE ACT OF JUNE 8, 1938 (TIT. 22, SEC. 615 U. S. CODE) IS INDEFINITE, UNCERTAIN, AND FIXES NO DEFINITE STANDARD OF CONDUCT, THE VIOLATION OF WHICH CONSTITUTES A CRIME, THEREBY INFRINGING PETITIONER'S RIGHTS UNDER THE FIFTH AND SIXTH ARTICLES IN THE BILL OF RIGHTS TO THE CONSTITUTION OF THE UNITED STATES.

This Section 5 of the 1938 Act is the penal section. It provides that:

> "Any person who wilfully fails to file any statement required to be filed under this Act, or in complying with the provisions of this Act, makes a false statement of a material fact, or *wilfully omits to state any material fact required to be stated therein* shall, on conviction thereof, be punished by a fine of not more than $1,000 or imprisonment for not more than two years, or both." (Italics supplied.)

The italicized words in this section, "wilfully omits to state any material fact required to be stated therein", are the only ones applicable in this case. The petitioner filed all original registration statements and all supplemental registration statements required of him. It is not charged in the indictment that he made any false statements in any of the three supplemental registration statements. The indictment is limited to the charges in the remaining three counts that he wilfully omitted to state material facts which were required to be stated in the three supplemental registration statements.

What are "material facts", the omission of which shall constitute the crime for which severe punishment is prescribed, is nowhere defined in said section. Likewise such definition of "material facts" or what omission shall constitute a "material fact" is not contained in any other section of the Act of June 8, 1938 as amended by the Act of August 7, 1939. Such failure of these statutes was corrected in the New Act of April 29, 1942, Public No. 532 (hereafter referred to as New Act). Section 2(a) of this New Act states in detail what shall be included in original and supplemental registration statements:

"• • • which shall be regarded as material for the purposes of this Act."

The counts of the indictment under which petitioner was convicted, being limited to the three supplemental registration statements, reference must necessarily be made to that part of the 1938 Act as amended by the 1939 Act to see what is required therein to be stated in a supplemental registration statement. Section 2 of the Act of 1939 amending Section 3 of the 1938 Act provides:

"Sec. 2. That section 3 of the Act entitled 'An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes' approved June 8, 1938 (public numbered 583, Seventy-fifth Congress, third session), is hereby amended to read as follows:

"Sec. 3. Every person who has filed a registration statement required by section 2 shall, within thirty days after the expiration of each period of six months succeeding the first filing, file with the Secretary a statement under oath, on a form prescribed by the Secretary, which shall set forth with respect to such preceding six months' period—

"'(a) Such facts as may be necessary to make the information required under section 2 hereof accurate and current with respect to such period.

"'(b) The amount and form of compensation received by such person for acting as agent for a foreign

principal which has been received during such six months' period as agent of a foreign principal either directly or indirectly from any foreign principal, and

"'(c) A statement containing such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period."

There is thus no definition, or even indication in this section of the Act as to what are "material facts," the wilful omission of which in the supplemental registration statements shall constitute a crime.

The Secretary of State was required by this section to prescribe the form for the supplemental registration statements. The Secretary was also required in Section 2 of the unamended Act of 1938 to prescribe the form to be used for original registration statements. He did prescribe both forms. The petitioner used said appropriate forms in filing his original and his supplemental registrations.

These two classes of forms were identical, except for Paragraphs 15, not in question here (R-22, 28, 32, 46). The change in this paragraph as between the two classes of forms is no doubt due to the specific requirements of the amended subsection 3(b) above quoted.

The indictment charges in counts II, III and V that petitioner omitted to state certain activities "a part of his business and activities" in answer to paragraphs 11 of the registration forms which are identical in their requirement that there be given:

"Comprehensive statement of nature of business of registrant."

There were 19 of these identical paragraphs or requirements in all of the registration forms except as to paragraph 15, as above noted, and these paragraphs are correctly summarized by the court below in its opinion, commencing at foot of page 3 and ending at top of page 4 thereof (R-322-323). None of the paragraphs of the form except No. 11 is involved in the indictment.

The supplemental registration form contained a printed notice at the top thereof that where the answer to any paragraph therein, except No. 1, would be the same as the answer given to the corresponding paragraph in a statement previously filed, the word "same" could be used in answering such paragraph in the supplemental form (R-27, 30, 44).

The constitutional deficiency of indefiniteness and uncertainty and the failure to fix a standard of conduct, the violation of which should constitute a crime is in Section 5 of the Act. There is no indefiniteness and uncertainty in subsection 3(c) but it fixes no standard. In fact, it fixes nothing. It gives permissive, but not mandatory authority to the Secretary of State to fix the details required under the Act of the activities of a registrant "as agent of a foreign principal" during the preceding six months' period. The Act requires an agent of a foreign principal to report certain details. The Secretary may fix the "activities of such person as agent of a foreign principal" of the "detail required under this Act", which he deems necessary to have explained and make of record.

This subsection 3(c) may not be rewritten, which the court below did do, as is shown by the following comparison:

Subsection 3(c)	Court's Rewrite
"A statement concerning such detail required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal for such six months' period".	"We interpret the provision as follows: a statement of the activities of such person (an agent of a foreign principal) during such six months' period." (R-324).

A criminal statute must be applied as it is found. It cannot be rewritten under the guise of "interpretation" as the court below has done. *United States v. George*, 228 U. S. 14, 22; *Bathgate and others v. United States*, 220 U. S. 220, 225; *Falsulo v. Umited States*, 272 U. S. 620; *United States*

v. Chase, 135 U. S. 255. See also Edward Livingston's statement quoted in the petition (P. 32).

If the subsection 3(c) has to be judicially rewritten to uphold the conviction and sentence of petitioner, such subsection would then be indefinite and uncertain along with the penal section 5 of the Act and the petitioner could not be constitutionally convicted under the said subsection 3(c) nor sentence imposed upon him under section 5 of the Act. *United States v. Cohen Grocery Company,* 255 U. S. 81, affirming 264 Fed. 218; *Lanzetta v. New Jersey,* 306 U. S. 451; *Gorin v. United States,* 312 U. S. 19, 28; *United States v. Wurzbach,* 280 U. S. 396; *United States v. Capital Traction Company,* 34 App. D. C. 592; *Czarra v. Board of Medical Examiners,* 25 App. D. C. 443; *Louisville & Nashville R.R. Co., v. Commonwealth,* 99 Ky. 132; *Oregon v. Mann,* 2 Oregon 236; *Louisiana v. Gasler,* 44 La. Ann. Rep. 636.

The phrase "agent of a foreign principal" in subsection 3(c), which the court below found in its way, is found twice in the preceding subsection 3(b), wherein Congress itself fixed the requirement. There, in each instance, it is plainly apparent that the phrase is used in connection with the compensation received by a registrant for acting as the agent of a foreign principal and received directly or indirectly by the registrant from any foreign principal for acting as agent of a foreign principal. That is, subsection 3(b) is not interested in the compensation received by the agent in any capacity except in his capacity as an agent of a foreign principal nor in any compensation received by him from sources other than direct or indirect from foreign principals.

We submit that the same phrase in subsection 3(c) is used in identically the same manner; that is, that the Secretary may fix in supplemental registration forms, prescribed by him, such details as the agent is required to report under

the Act "of the activities of such person as agent of a foreign principal" during the preceding six months' period for which the supplemental registration statement is filed, and which the Secretary may want. The Secretary was not authorized by subsection 3(c) or elsewhere in the Act to fix for reporting in a supplemental registration all activities of a registrant. He could only fix for reporting in the supplemental registration the activities of such person "as agent of a foreign principal."

The Secretary in Paragraph II fixed no activities for reporting by a registrant "as agent of a foreign principal." Most certainly in asking for a "comprehensive statement of nature of business of registrant," as he did do in Paragraph 11 of the supplemental form, he did not fix for reporting by such agent any or all activities of the agent on his own behalf. There is not a word in subsection 3(c) of the Act which authorized the Secretary to ask for "nature of business of registrant." Yet the court below (R-326) stated that: "Item 11 in itself is an exercise of the Secretary's power requiring registrant to reveal his own political activities."

Support of any such conclusion would require "business", as used in Paragraph 11 of the form to be synonymous with "activities", as used in subsection 3(c) of the statute; that is, that all "business" must be "activities" and all "activities" must be "business" which is simply not true. Also "comprehensive" and "nature" as used in the said Paragraph 11, would have to be synonymous with "details required under this Act," as used in the subsection.

In an effort to make subsection 3(c) of the Act and Paragraph 11 of the supplemental registration form require that the registrant must report all of his activities whether or not performed as agent for his foreign principals, the court

below also relied in its opinion upon paragraph 12 of Chapter IV of the regulations issued by the Secretary of State, which provides:

> "Agents of foreign principals who engage, whether or not on behalf of their foreign principal, in activities not included among the exceptions set forth in the Act and regulations shall be considered subject to the requirement of registration." (*Infra*, p. 92.)

This regulation does not require, or even advise an agent of a foreign principal that as such agent he must report any or all of his activities, whether or not performed "as agent for a foreign principal," using the language of subsection 3(c) of the Act. The regulation simply and clearly provides that if a person is such an agent, and performing such activities for a foreign principal as are not excepted under the proviso to section I of the Act and the regulations, that agent must register. The petitioner did register. What he must state in answer to Paragraph 11 of the Supplemental form; what "material facts" he must report in answer to that paragraph 11, are simply not stated in this paragraph of the regulation, nor elsewhere in either the regulations or Section 3(c) of the Act.

The whole of the English language was available to Congress in writing the 1938 Act and its 1939 amendment. Words in the English language were available for Congress to write these statutes in such terms as to make them definite and certain, fix standards of conduct, the violation of which should constitute a crime and to require registrants in their supplemental registrations to report all of their activities, whether or not for a foreign principal if that was what was required. In fact Congress used the necessary words in Section 2 of the New Act of 1942 to itself fix such a requirement.

In fact, this New Act of 1942—in terms so clear as not to admit of resort to committee reports as an aid to their interpretation—has met the constitutional defects which petitioner insists exist in the 1938 Act as amended in 1939. What are "material facts" are stated in this New Act, that Act is apparently definite and certain, at least to the extent of expressly providing in Section 2 thereof that a registrant must report all of his activities, both for himself and for his foreign principal. A committee report accompanying such an unambiguous bill cannot be used to establish, or assist in establishing that in these respects the New Act is similar to the prior 1938 and 1939 Acts which it clearly is not.

Standard Fashion Company v. Magrane Houston Company, 258 U. S. 346.
McLean v. United States, 226 U. S. 374.
Binns v. United States, 194 U. S. 486.
Caminetti v. United States, 242 U. S. 470.

If the Secretary had thought that the 1938 Act as amended in 1939 authorized him in supplemental registration forms to fix a requirement that a registrant report all of his activities, whether or not "as agent for a foreign principal," there was likewise available to him the whole of the English language with which to do it. Instead of doing it, he simply wrote Paragraph 11 of the supplemental registration form for a comprehensive statement of the nature of business of registrants.

If any such authority had existed in the Secretary, under the 1938 Act as amended, to require and fix for reporting a complete statement of the activities of registrant regardless of whether they were engaged in as agent for a foreign principal, simple fairness towards the citizens of the United States would have required him to have stated such an administrative requirement in the supplemental registration forms which all registrants had to use. This

he unquestionably did not do and it is difficult to conclude, in view of the terms of Section 3 of the Act as amended, that the distinguished present Secretary of State ever thought he had any such authority thereunder. At least if such authority had existed, the administrative requirements to report in supplemental registration all activities, whether or not as agent of a foreign principal, should have been stated in the regulations in unequivocal language for the information and guidance of registrants. This likewise was not done. Such agents were simply advised, in substance, that if they or their activities as agents were not excepted, in the law, they must register.

It is respectfully submitted that subsection 3(c) of the Act and all of the remainder of said Act as amended, together with the Secretary's Paragraph 11 of the supplemental registration form and Paragraph 12, Chap. IV of his regulations do not make definite and certain the "material facts" required by the Act to be reported and which Section 5 of said Act provides may not be omitted from a supplemental registration on forms prescribed by the Secretary under pain of a penitentiary sentence and heavy fine. Also, that all of these two 1938 and 1939 statutes, regulations and forms, when taken together, do not justly and fairly advise a registrant that in answer to Paragraph 11 of his supplemental registration form he must state all of his activities, even though they may be entirely for himself which has not been proven to be otherwise in this case.

At the very least the requirement derived from the amended Section 3 of the Act, the forms and the regulations as to what a registrant should report in answer to Paragraph 11 of the supplemental registration form is ambiguous, indefinite and uncertain. Even the court below took nearly twenty-four closely printed pages to reach its conclusion; in doing so it undertook to rewrite sub-

section 3(c) of the amended Act, and placed a construction on Paragraph 11 of the supplemental registration form and Paragraph 12 of Chap. IV of the regulations which is unwarranted by the terms thereof.

This Court pointed out in *United States v. Wiltberger*, 5 Wheat. 76, 95 that:

> "The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the court, which is to define a crime and ordain its punishment."

Also in *Harrison v. Vose*, 9 How. 372, 378, that:

> "In the construction of a penal statute, it is settled, also, that all reasonable doubts concerning its meaning ought to operate in favor of the respondent."

See also *Northern Securities Company v. United States*, 193 U. S. 197, 358 and *Bolles v. Outing Co.*, 175 U. S. 262.

Arguments of counsel seeking in times of war to invoke the regularity of grand jury proceedings established in times of peace and the terms of the Constitution of the United States to protect the rights of an American citizen will not be viewed by this Court, the signer of this brief is sure, as "technical" or "hypertechnical". Especially is this responsibility heavy on defense counsel when there is considered the atmosphere created in the trial court by the prosecuting attorney.

III.

THE ANSWERS MADE BY PETITIONER TO PARAGRAPH II OF THE THREE SUPPLEMENTAL REGISTRATION STATEMENTS WERE SUFFICIENT COMPLIANCE THEREWITH AND THE COURT BELOW ERRED IN NOT SO HOLDING. IT ALSO ERRED IN NOT HOLDING THAT THE MISCONDUCT OF THE PROSECUTING ATTORNEY WAS PREJUDICIAL AND THAT THE TRIAL COURT ERRONEOUSLY INSTRUCTED THE JURY THAT IT SHOULD CONVICT PETITIONER IF IT FOUND HE PERFORMED ANY OF THE ACTIVITIES NAMED IN THE THREE COUNTS OF THE INDICTMENT WITHOUT FINDING THAT HE PERFORMED SUCH ACTIVITIES FOR ONE OR BOTH OF HIS FOREIGN PRINCIPALS OR FOR ANY FOREIGN PRINCIPAL.

By reference, and in an effort to compress this brief, there is made a part of the argument in support of this point the statement of facts contained in the petition with respect to the terms of Paragraph 11 of the three supplemental registration forms and petitioner's argument with respect thereto. Also, the argument on the law in support of the preceding point II of this brief as to the terms of Section 3 of the 1938 Act is amended by Section 2 of the Act of 1939 with respect to the specific requirement stated in subsections 3(a) and 3(b) and the permissive, but not mandatory duty conferred on the Secretary of State in subsection 3(c) of the Act to "fix" in his supplemental forms such activities as he wanted reported concerning the activities of the "details" required in the Act to be reported by a registrant "as agent of a foreign principal."

The Secretary evidently did not want a report of any activities of a registrant "as agent for a foreign principal" because he asked for none in Paragraph 11 of his supplemental registrant form.

The requirement in said Paragraph for: "Comprehensive statement of nature of business of registrant" is not one concerning the registrant's activities for himself or

for his foreign principal, or both. We submit that it cannot be made such by any accepted rules of construction. It is a requirement concerning "nature of business". Even what is meant by "nature" and by "business" was not shown in the forms, statute, or regulations. The paragraph is a generic one and nowhere in the amended Section 3 authorizing and requiring the Secretary to prescribe forms for supplemental registrations or elsewhere in the Act is he authorized to require a report concerning the "nature of business of registrant."

The generic answer "Author and Journalist" stated the nature of petitioner's business—not only the nature of his business for more than a third of a century, during which he had earned his livelihood as a "prolific writer" of books and magazine articles, but the "nature of business" for which he was employed by his two foreign principals, as meticulously stated in the respective contracts of employment (R-24-26, 48-50). The work, or "business" of an editor and journalist was precisely the work he performed for his foreign principals.

With all of the resources of the Federal Bureau of Investigation, the Postoffice Inspection Service, and the Special Agency Service of the Bureau of Internal Revenue at his command—and this Court may take judicial notice of the ability, resourcefulness, and skill of these investigational services of the United States—no substantial evidence was produced at the trial that even one of the activities charged in Counts II, III and V of the indictment was performed by petitioner for either or both of his foreign principals or for any other foreign principal. It should be further added at this point that the prosecution had the aid of the British Censor's office in Bermuda, through which passed mail between petitioner and his Munich newspaper principal, as well as others in Europe,

and that no evidence was produced from that source that any of these activities were performed by petitioner for any foreign principal (R-206-210).

The most that was shown in this respect is that there was mailed an envelope addressed to a German official containing extracts from speeches of a certain Senator as published in the Congressional Record from time to time! This envelope, containing such public and harmless extracts, was mailed in New York in July 1941 while we were not only officially at peace with Germany and maintained diplomatic relations with her, but while the Neutrality Act of November 4, 1939 remained in effect. At that time any American citizen could have freely communicated with any person abroad without violating any law. If it be a fact that petitioner mailed this envelope and its contents, that not only does not establish that he was an agent of the official to whom he mailed it, but it shows that instead of conducting propaganda in the United States, he was in fact attempting to conduct propaganda in Germany —which attempt was neither within the letter nor the spirit of the amended 1938 Act.

There being no evidence whatever before the jury from which it might draw a reasonable inference that the petitioner,—in engaging in the activities charged in the three remaining counts of the indictment—which were reasonably designed to uphold the Neutrality Act of November 4, 1939, and keep the United States out of war—it may be reasonably inquired how it was that the jury convicted him.

The answer to this question is found in two things: (1) The prejudicial misconduct of the prosecuting attorney and (2) The instructions of the trial court that the jury should convict petitioner if it found he engaged in the activities charged in the indictment without the necessity of finding that he engaged in them for any foreign principal.

As to the misconduct of the prosecuting attorney, it is to be remembered that when the activities were performed and the indictment secured from a grand jury, which had no legal existence at the time, the Neutrality Act of November 4, 1939 was in effect. The trial was held commencing on February 16, 1942, or within approximately two months after the declaration of war between the United States and Germany, and continued until March 5, 1942, when the verdict of guilty was brought in by the jury (R-322-323).

Though an American citizen since 1901, the petitioner was of German birth, and until his contracts of employment were canceled, long before the indictment, he was admittedly an employee of two German principals.

During his opening statement to the jury, the prosecuting attorney held in his hand a copy of petitioner's book, *Spreading Germs of Hate*, which had been published in 1930 describing propaganda activities in the United States in 1914 to 1919 by the English, French and others and by Germany from 1914 to about the time the United States entered the war against Germany on April 6, 1917, during which time petitioner worked for the German Government as a propagandist. While holding this book in his hand and exhibiting it to the jury, this prosecuting attorney stated:

> "I hold here in my hand a book. This book will be the text of the Government and the obituary of this defendant.
>
> "Its title is 'Spreading Germs of Hate' by George Sylvester Viereck" (R-122).

In his closing argument to the jury this prosecutor said:

> "You have seen the book which, as I told you would be the text of the Government's case and the epitaph of this defendant" (R-134).

That the promise of the prosecutor the book would be used in the trial as the text of the Government was made

good all during the course of the trial and in the closing arguments of both prosecuting attorneys is amply demonstrated by the record of the trial (R-123-138, 159). After the jury had listened to this for days, the chief prosecuting attorney referred sarcastically in his closing argument to petitioner as "our little proponent of better relations", "the sinister character of this man's activities"; "The most amazing and undoubtedly the most contemptuous gesture and activity of this proponent of better relations"; that it was the purpose of the Germans "To divide us and literally beat our brains out." This prosecuting attorney then closed the case as follows:

> "In closing, let me remind you, ladies and gentlemen, that this is war. This is war, harsh, cruel, murderous war. There are those who, right at this very moment, are plotting your death and my death; plotting our death and the death of our families because we have committed no other crime than that we do not agree with their ideas of persecution and concentration camps. This is war. It is a fight to the death. The American people are relying upon you, ladies and gentlemen, for their protection of the men who man the guns in Bataan Peninsula, and everywhere else. They are relying upon you, ladies and gentlemen, for their protection. We are at war. You have a duty to perform here.
>
> "As a representative of your Government I am calling upon every one of you to do your duty" (R-159).

The jury convicted and the prosecutor thus made good his promise that the book would be the "obituary" and the "epitaph" of the petitioner.

The defense objected to the admission of this book in evidence (R-130, 128) and was allowed an exception (R-130). It objected to the reading of isolated extracts therefrom to the jury and this objection was overruled (R-128). The petitioner had tried to show his attachment to the United States but was not permitted to do so (R.-138-140).

The closing arguments came after petitioner's chief defense attorney had been removed from the case by the action of the court (R-115) and the other trial attorney did not make his objections to the inflammatory argument at the time it was made but instead made them after the court had commenced his instructions (R-160). Both the trial court and the court below held that the objections came too late. Further, the remaining trial counsel did not prepare and submit to the trial court prayers for instruction concerning the admission of the book and its use during the trial.

We submit that such omissions, held by both courts below to have been fatal, are in themselves sufficient to establish that the petitioner was seriously prejudiced by the trial Court's abrupt refusal to permit the chief defense attorney to conclude the defense in the case by preparing and submitting appropriate prayers for instructions and by making the defense argument to the jury.

Berger v. United States, 295 U. S. 78, 84.
Hall v. United States, 150 U. S. 76, 82.
Glasser v. United States, No. 32, Adv. Opins. Oct. Term, 1941, 86 U. S. Law. ed. 405.
Johnson v. Zerbst, 304 U. S. 458.

We further submit that by the use of this book and the unwarranted statements made by the prosecuting attorney to the jury, there was, or reasonably could have been, created belief in the minds of the jurors that the petitioner was a sinister individual, in league with the German War Lords and an enemy of the United States, his country. Also that the jury may well have hearkened to the demand of the prosecuting attorney that they convict the petitioner in order to support the men on Bataan peninsula, who were then trying to defend their positions against great odds, and in order to protect the people of the United States

from being divided and literally having their brains beat out!

All this was notwithstanding that petitioner had severed his agency relationships with his foreign principals long before the indictment, declaration of war and the trial and notwithstanding, we repeat, that no evidence submitted to the jury established or tended to establish that in the performance of his isolationist activities the petitioner was acting as the agent of any foreign principal.

But in view of the action of the trial court denying petitioner's prayer No. 19 (R-96-101) and the granting of the prosecution's prayers Nos. 2A, 2 and 8 (R-101-114) over the objections of the defense, conviction was insured. In substance, these three prosecution prayers compelled the jury to bring in a verdict of guilty on each of the three counts of the indictment. Petitioner did not deny that he had engaged in some of the activities charged in the indictment, as explained in the petition herein (Pp. 18-25) but it was enough under the trial court's instructions of the prosecution's prayers Nos. 2A and 8 for the jury to find that petitioner had engaged in such activities and had not reported them in response to the requirement of Paragraphs 11 of the three supplemental registration statements.

Such instructions of the trial court were consistent with the theory of the prosecution throughout that the petitioner was guilty because he engaged in the activities charged in the indictment but proved only as to the activities summarized by the court below in the paragraph of its opinion quoted in, and limited by the explanations in the petition herein (Pp. 18-25).

However, if the prosecution had been convinced that the failure to *report* the activities charged in the indictment constituted a violation of the 1938 Act as amended, it was

wholly unnecessary to prove more than that petitioner engaged therein. But in addition to what has just been stated concerning the creation of "atmosphere", arousing the prejudice of the jury, the prosecution placed testimony before the jury that in petitioner's study in New York there were photographs hanging on the walls thereof of Hitler and Goebbels (R-142, 146); that petitioner had protested to the editor of a magazine concerning an article published therein concerning Hitler and his maid (R-151-153), over defense objections; that the late isolationist Senator Lundeen, who had been assisted by petitioner in writing some speeches, had allegedly taken "kickbacks" from some of his employees (R-304-305); and placed on the witness stand for extended examination the convicted perjurer Hill concerning the large number of non-interventionists' reprints from the Congressional Record which he had obtained and mailed out or had mailed out (R-279, 290-301), without showing by such testimony or otherwise that petitioner had anything whatsoever to do therewith except in the instance of one speech by Senator Lundeen. As to this reprint Hill admitted that petitioner stated he was acting as an intermediary for the said Senator (R-283). Except the testimony as to this one speech, such evidence was objected to because the petitioner had not been connected by any evidence with such mailing out of reprints by witness Hill, but the objection was overruled (R-293). Later, the objection was renewed with a motion to strike but they were also overruled (R-297).

It was after this evidence had been introduced that there took place what the court below characterized as stage play on the part of this prosecuting attorney in having a large number of mail sacks brought before the jury (R-161-166). This episode was far more than harmless stage business on the part of the prosecutor, as the court below

seemed to think (R-341). It was coolly and deliberately calculated to support the testimony of the Witness Hill, as to the large number of reprints he had mailed out, and to create the impression in the minds of the jurors that petitioner had something to do with Hill's activities in this respect without it having been so established by the evidence.

It was because of the character of much evidence which the prosecution was allowed by the court to introduce without showing that petitioner was connected therewith; and that he was connected therewith as agent of a foreign principal; the inflammatory statements of the prosecutor to the jury during the course of the taking of evidence; and the character of closing argument which the court permitted the prosecutor to make to the jury, that the petitioner was convicted.

Even if the petitioner's construction of the amended subsection 3 of the Act, and of both the Secretary's regulations and Paragraph 11 of his registration form as not requiring him to report his activities on his own behalf should be in error—which we do not concede—the conduct of the prosecuting attorney and the action of the trial court in overruling defense objections to irrelevant, immaterial and incompetent evidence placed before the jury entitle the petitioner to the granting of this petition and to a reversal of the courts below.

IV.

THE PETITIONER WAS INDICTED FOR ONE OFFENSE, AND TRIED FOR ANOTHER, NEITHER OF WHICH WAS WITHIN THE 1938 ACT AS AMENDED BY THE 1939 ACT.

By way of summary and restatement of much of the argument under the preceding points II and III of this brief, we submit that subsection 3(c) of the 1938 Act as

amended by the 1939 Act did not require an agent of a foreign principal to report anything. It merely gave the Secretary of State permissive authority, but not mandatory duty to "fix" in the supplemental registration forms the activities of such details which the Congress had itself stated in section 2 of the Act for the original registration statements as the Secretary might deem necessary or desirable to have stated in the supplemental registrations.

The Secretary did not do this. Instead he issued the same form for the supplemental registrations as he had issued for the original registrations, except as to paragraph 15 which necessarily differed because of the specific requirement which Congress wrote into subsection 3(b) for supplemental registrations. Paragraphs 11 in both the original and supplemental registration forms did not request any activities of a registrant; instead they requested a "Comprehensive statement of nature of business of registrant".

So far as the supplemental registration forms are concerned, this paragraph was not in accordance with subsection 3(b) and is to that extent beyond the authority of the Secretary and void. *United States v. Symonds*, 120 U. S. 49; *United States v. Garlinger*, 169 U. S. 316.

But even if the paragraph 11 of the supplemental registration form be in accord with subsection 3(c) of the Act in requiring a comprehensive statement of nature of business of registrant, said paragraph did not require a statement of activities concerning the "details" which Congress has required in section 2 of the Act an agent report in his original registration statement and under section 3 should bring current in his supplemental registration. *Any such requirement that a supplemental registration should state all of his activities for himself or his foreign principal or both is as surely absent from the 1938 Act as amended as it*

is surely present in section 2 of the New Act of 1942. Most certainly paragraph 11 of the supplemental registration form did not ask for such activities.

Therefore, in being indicted—if he was lawfully indicted—for failure to report the activities charged in Counts II, III, and V of the indictment, the petitioner was not indicted for an offense stated in the 1938 Act as amended by the Act of 1939—an offense, we repeat, which is stated in the subsequent section 2 of the New Act of 1942.

The petitioner was tried by the Government before the jury with being a propagandist. This was admitted both in the opening address and in the closing argument by the prosecuting attorney to the jury. As heretofore stated, the prosecutor informed the jury in his opening address that the petitioner's book, *Spreading Germs of Hate*, would be the text of the Government in the trial and the obituary of the petitioner; in his closing argument he reminded the jury of his statement in his opening argument that the book would be the text of the Government and the epitaph of the petitioner. Both the promise and the boast of the prosecutor were made good in the trial by the use made by the prosecution of the book.

The bringing of the large number of mail sacks into the court room before the jury and the detailed testimony of Government's witness Hill as to the large numbers of various reprints which he had obtained from the Government Printing Office, paid for by money given to him by others than petitioner, and had mailed out was all a part of this effort to make petitioner out as a propagandist for Germany or some German principal without any evidence that petitioner had been such an agent-propagandist since prior to April 6, 1917. The same may be said with respect to the evidence of reprints mailed out by the War Debts Committee.

This is made doubly clear in the closing argument of the prosecuting attorney who,—after having read various extracts from the petitioner's book on propaganda in 1914-1918 and in absolute disregard of the fact that all agency relationships whatever between petitioner and his German principals had terminated long before—stated to the jury:

> "Ladies and gentlemen, that is what we American people were exposed to in this war. Personally, it is my feeling, and I think it is shared by all of us, that we have caught this thing before it was the ruination of all of us."

Even if petitioner had been properly tried for being a propagandist for the German Library of Information prior to July 1941, when his contract was cancelled, and for the Munich newspaper prior to September 1941, when that contract was cancelled—and when we were not in the war but were by law a neutral nation, there was not a word from the prosecuting attorney to the jury that on and after April 6, 1917, petitioner sold Liberty Bonds for the United States and received official thanks for the effectiveness of his patriotic advice!

Conclusion.

Upon the whole case it is submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

O. R. McGuire,
Attorney for Petitioner.

APPENDIX.

APPENDIX.

Statutes Involved.

The Act of June 8, 1938, c. 327, (52 Stat., 631), as amended by the Act of August 7, 1939, c. 521, (53 Stat., 1244) is as follows:

"To amend an Act entitled 'An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes', approved June 8, 1938 (Public Law Numbered 583, Seventy-fifth Congress, third session).

"Be It Enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That Section 1 of the Act entitled 'An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes', approved June 8, 1938 (Public Law Numbered 583, Seventy-fifth Congress, third session), be, and it is hereby, amended to read as follows:

"That as used in this Act—

"(a) The term 'person' means an individual, partnership, association, or corporation;

"(b) The term 'United States' include the United States and any place subject to the jurisdiction thereof;

"(c) The term 'foreign principal' includes the government of a foreign county, a political party, of a foreign country, a person domiciled abroad, any foreign business, partnership, association, corporation, or political organization, or a domestic organization subsidized, directly or indirectly, in whole or in part by any of the entities described herein;

"(d) The term 'agent' of a 'foreign principal' means any person who acts or engages or agrees to act as a public-relations counsel, publicity agent, or an agent, servant, representative, or attorney for a foreign principal, and shall include any person who receives compensation from or is under the direction of a foreign principal:

Provided, however, That such term shall not include—

"(1) a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States; nor

"(2) any official of a foreign government recognized by the United States as a government other than a public-relation counsel or publicity agent or a citizen of the United States, whose status and the character of whose duties as such official are of record in the Department of State of the United States; nor

"(3) any member of the staff of or person employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States, other than a public-relations counsel or publicity agent, whose status and the character of whose duties as such member or employee are of record in the Department of State of the United States; nor

"(4) any person performing only private, non-political, financial, mercantile, or other activities in furtherance of the bona fide trade or commerce of such foreign principal; nor

"(5) any person engaged only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts.

"e) The Term 'Secretary' means the Secretary of State of the United States."

"Sec. 2. That section 3 of the Act entitled 'An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes,' approved June 8, 1938 (Public Law Numbered 583, Seventy-fifth Congress, third session), is hereby amended to read as follows:

"Sec. 3. Every person who has filed a registration statement required by section 2 shall, within thirty days after the expiration of each period of six months succeeding the first filing, file with the Secretary a statement, under oath, on a form prescribed by the Secretary, which shall set forth with respect to such preceding six months' period—

"(a) Such facts as may be necessary to make the information required under section 2 hereof accurate and current with respect to such period;

"(b) The amount and form of compensation received by such person for acting as agent for a foreign principal which has been received during such six months' period either directly or indirectly from any foreign principal; and

"(c) A statement containing such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period."

"Sec. 3. That section 4 of the Act entitled 'An act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes', approved June 8, 1938 (Public Law Numbered 583, Seventy-fifth Congress, third session), is hereby amended to read as follows:

"Sec. 4. The Secretary shall retain in permanent form all statements filed under this Act, and such statements shall be public records and open to public examination, and inspection at all reasonable hours, under such rules and regulations as the Secretary may prescribe:

PROVIDED, That the Secretary is hereby authorized to withdraw from the public records the registration statement of any person whose activities have ceased to be of a character which requires registration under the terms of this Act."

Sections 2, 3, 5, 6 and 7 of the original Act of June 8, 1938, remained unamended as follows:

"Sec. 2. Every person who is now an agent of a foreign principal shall, within thirty days after this Act takes effect, and every person who shall hereafter become an agent of a foreign principal shall forthwith file with the Secretary a registration statement, under oath, on a form prescribed by the Secretary which shall set forth—

(a) The name, business address, and residence address of the registrant;

(b) The name of the foreign principal or other person or organization for which such person is acting as agent;

(c) A copy of all contracts of employer under which such person acts or agrees to act as such agents,

if written, or a full statement of the terms and conditions thereof, if oral;

(d) The date when each such contract was made, the date of commencement of activity thereunder, and the period during which such contract is to be in effect;

(e) The compensation to be paid, if any, and the form and time of payment, under such contract;

(f) The name of every foreign principal or other person or organization which has contributed or which has promised to contribute to the compensation provided in such contract; and

(g) If the registrant be a partnership, association, or corporation, a true and complete copy of its charter, articles of incorporation, co-partnership, association, constitution, and bylaws, and any other instrument or instruments relating to its organization, powers and purposes."

* * * * *

"Sec. 5. Any person who wilfully fails to file any statement required to be filed under this Act, or in complying with the provisions of this Act, makes a false statement of a material fact, or wilfully omits to state any material fact required to be stated therein shall, on conviction thereof, be punished by a fine of not more than $1,000 or imprisonment for not more than two years, or both.

"Sec. 6. The Secretary is authorized and directed to prescribe such rules, regulations, and forms as may be necessary to carry out this Act.

"Sec. 7. This Act shall take effect on the ninetieth day after the date of its enactment."

[Public Law 532—77th Congress]
[Chapter 263—2d Session]
[S. 2399]

AN ACT.

To amend the Act entitled "An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes", approved June 8, 1938, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assem-

bled, That the Act of June 8, 1938 (52 Stat. 631, U. S. C., title 22, sec. 233 (a) to sec. 233 (g)), entitled "An Act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes", as amended, is hereby amended to read as follows:

"POLICY AND PURPOSE

"It is hereby declared to be the policy and purpose of this Act to protect the national defense internal security, and foreign relations of the United States by requiring public disclosure by persons engaging in propaganda activities and other activities for or on behalf of foreign governments, foreign political parties, and other foreign principals so that the Government and the people of the United States may be informed of the identity of such persons and may appraise their statements and actions in the light of their associations and activities.

"DEFINITIONS

"SECTION 1. As used in and for the purposes of this Act—

"(a) The term 'person' includes an individual, partnership, association, corporation, organization, or any other combination of individuals;

"(b) The term 'foreign principal' includes—

"(1) a government of a foreign country and a foreign political party;

"(2) an individual affiliated or associated with, or supervised, directed, controlled, financed, or subsidized, in whole or in part, by any foreign principal defined in clause (1) of this section 1 (b);

"(3) a person outside of the United States, unless it is established that such person is an individual and is a citizen of and domiciled within the United States or that such person is not an individual, is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States, and has its principal place of business within the United States. Nothing in this clause (3) shall limit the operation of clause (5) of this section 1 (b);

"(4) a partnership, association, corporation, organization, or other combination of individuals organized

under the laws of, or having its principal place of business in, a foreign country;

"(5) a domestic partnership, association, corporation, organization, or other combination of individuals, subsidized directly or indirectly, in whole or in part, by any foreign principal defined in clause (1), (3), or (4) of this section 1 (b);

"(c) Except as provided in section 1 (d) hereof, the term 'agent of a foreign principal' includes—

"(1) any person who acts or agrees to act, within the United States, as, or who is or holds himself out to be whether or not pursuant to contractual relationship, a public-relations counsel, publicity agent, information-service employee, servant, agent, representative, or attorney for a foreign principal;

"(2) any person who within the United States collects information for or reports information to a foreign principal; who within the United States solicits or accepts compensation, contributions, or loans, directly or indirectly, from a foreign principal; who within the United States solicits, disburses, dispenses, or collects compensation, contributions, loans, money, or anything of value, directly or indirectly, for a foreign principal; who within the United States acts at the order, request, or under the direction, of a foreign principal;

"(3) any person who assumes or purports to act within the United States as an agent of a foreign principal in any of the respects set forth in clauses (1) and (2) of this section 1 (c); and

"(4) any person who is an officer or member of the active or reserve military, naval, or other armed forces of any foreign principal defined in clause (1) of section 1 (b) hereof, or who is an officer of or employed by any such foreign principal; and proof of any affiliation or employment, specified in this clause (4), of any person within a period of five years previous to the effective date of this Act shall create a rebuttable presumption that such person is an agent of a foreign principal;

"(d) The term 'agent of a foreign principal' does not include any news or press service or association organized under the laws of the United States or of any State or

other place subject to the jurisdiction of the United States, or any newspaper, magazine, periodical, or other publication for which there is on file with the Postmaster General a sworn statement in compliance with section 2 of the Act of August 24, 1912 (37 Stat. 553) as amended, published in the United States, solely by virtue of any bona fide news or journalistic activities, including the solicitation or acceptance of advertisements, subscriptions, or other compensation therefor, so long as it is at least 80 per centum beneficially owned by, and its officers and directors, if any, are citizens of the United States, and such news or press service or association, newspaper, magazine, periodical, or other publication, is not owned, directed, supervised, controlled, subsidized, or financed, and none of its policies are determined by any foreign principal defined in clause (1), (2), or (4) of section 1 (b) hereof, or by any agent of a foreign principal required to register under this Act;

"(e) The term 'government of a foreign country' includes any person or group of persons exercising sovereign *de facto* or *de jure* political jurisdiction over any country other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which such sovereign *de facto* or *de jure* authority or functions are directly or indirectly delegated. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority whether such faction or body of insurgents has or has not been recognized by the United States;

"(f) The term 'foreign political party' includes any organization or any other combination of individuals in a country other than the United States, or any unit or branch thereof, having for an aim or purpose, or which is engaged in any activity devoted in whole or in part to, the establishment, administration, control, or acquisition of administration or control, of a government of a foreign country or a subdivision thereof, or the furtherance or influencing of the political or public interests, policies or relations of a government of a foreign country or a subdivision thereof;

"(g) The term 'public-relations counsel' includes any person who engages directly or indirectly in informing, advising, or in any way representing a principal in any matter pertaining to political or public interests, policies, or relations;

"(h) The term 'publicity agent' includes any person who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise;

"(i) The term 'information-service employee' includes any person who is engaged in furnishing, disseminating, or publishing accounts, descriptions, information, or data with respect to the political, industrial, employment, economic, social, cultural, or other benefits, advantages, facts, or conditions of any country other than the United States or of any government of a foreign country or of a foreign political party or of a partnership, association, corporation, organization, or other combination of individuals organized under the laws of, or having its principal place of business in, a foreign country;

"(j) The term 'political propaganda' includes any oral, visual, graphic, written, pictorial, or other communication or expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence. As used in this section 1 (j) the term 'disseminating' includes transmitting or causing to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce or offering or causing to be offered in the United States mails;

"(k) The term 'registration statement' means the registration statement required to be filed with the Attorney General under section 2 (a) hereof, and any supplements thereto required to be filed under section 2 (b) hereof, and

includes all documents and papers required to be filed therewith or amendatory thereof or supplemental thereto, whether attached thereto or incorporated therein by reference;

"(l) The term 'American republic' includes any of the states which were signatory to the Final Act of the Second Meeting of the Ministers of Foreign Affairs of the American Republics at Habana, Cuba, July 30, 1940;

"(m) The term 'United States', when used in a geographical sense, includes the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, including the Philippine Islands, and all other places now or hereafter subject to the civil or military jurisdiction of the United States;

"(n) The term 'prints' means newspapers and periodicals, books, pamphlets, sheet music, visiting cards, address cards, printing proofs, engravings, photographs, pictures, drawings, plans, maps, patterns to be cut out, catalogs, prospectuses, advertisements, and printed, engraved, lithographed, or autographed notices of various kinds, and, in general, all impressions or reproductions obtained on paper or other material assimable to paper, on parchment or on cardboard, by means of printing, engraving, lithography, autography, or any other easily recognizable mechanical process, with the exception of the copying press, stamps with movable or immovable type, and the typewriter.

"REGISTRATION

"SEC. 2. (a) No person shall act as an agent of a foreign principal unless he has filed with the Attorney General a true and complete registration statement and supplements thereto as required by this section 2 (a) and section 2 (b) hereof or unless he is exempt from registration under the provisions of this Act. Except as hereinafter provided, every person who is an agent of a foreign principal on the effective date of this Act shall, within ten days thereafter and every person who becomes an agent of a foreign principal after the effective date of this Act shall, within ten days thereafter, file with the Attorney General, in duplicate, a registration statement, under oath, on a form prescribed by the Attorney General, of which one copy shall be transmitted promptly by the Attorney General to the Secretary of State for such comment, if any, as the Sec-

retary of State may desire to make from the point of view of the foreign relations of the United States. Failure of the Attorney General so to transmit such copy shall not be a bar to prosecution under this Act. The registration statement shall include the following, which shall be regarded as material for the purposes of this Act:

"(1) Registrant's name, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses, if any;

"(2) Status of the registrant; if an individual, nationality; if a partnership, name, residence addresses, and nationality of each partner and a true and complete copy of its articles of copartnership; if an association, corporation, organization, or any other combination of individuals, the name, residence addresses, and nationality of each director and officer and of each person performing the functions of a director or officer and a true and complete copy of its charter, articles of incorporation, association, constitution, and bylaws, and amendments thereto; a copy of every other instrument or document and a statement of the terms and conditions of every oral agreement relating to its organization, powers, and purposes; and a statement of its ownership and control;

"(3) A comprehensive statement of the nature of registrant's business; a complete list of registrant's employees and a statement of the nature of the work of each, unless, and to the extent, this requirement is waived in writing by the Attorney General; the name and address of every foregin principal for whom the registrant is acting, assuming or purporting to act or has agreed to act; the character of the business or other activities of every such foreign principal, and, if any such foreign principal be other than a natural person, a statement of the ownership and control of each; and the extent, if any, to which each such foreign principal is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party;

"(4) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no con-

tract exists, a full statement of all the circumstances, by reason of which the registrant is an agent of a foreign principal; a comprehensive statement of the nature and method of performance of each such contract, and of the existing and proposed activity or activities engaged in or to be engaged in by the registrant as agent of a foreign principal for each such foreign principal;

"(5) The nature and amount of contributions, income, money, or thing of value, if any, that the registrant has received within the preceding sixty days from each such foreign principal either as compensation or for disbursement or otherwise, and the form and time of each such payment and from whom received;

"(6) A detailed statement of every activity which the registrant is performing or is assuming or purporting or has agreed to perform for himself or as any other person other than a foreign principal and which requires his registration hereunder;

"(7) The name, business, and residence addresses, and, if an individual, the nationality, of any person who has within the preceding sixty days contributed or paid money or anything of value to the registrant in connection with any of the activities referred to in clause (6) of this section 2 (a) and the amount or value of the same;

"(8) A detailed statement of the money and other things of value spent or disposed of by the registrant during the preceding sixty days in furtherance of or in any way in connection with activities which require his registration hereunder and which have been undertaken by him either as an agent of a foreign principal or for himself or any other person;

"(9) Copies of each written agreement and the terms and conditions of each oral agreement, including all modifications of such agreements, or, where no contract exists, a full statement of all the circumstances, by reason of which the registrant is performing or assuming or purporting or has agreed to perform for himself or for a foreign principal or for any person other than a foreign principal any activities which require his registration hereunder;

"(10) Such other statements, information, or documents pertinent to the purposes of this Act as the At-

torney General, having due regard for the national security and the public interest, may from time to time require;

"(11) Such further statements and such further copies of documents as are necessary to make the statements made in the registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

"(b) Every agent of a foreign principal who has filed a registration statement required by section 2 (a) hereof shall, within thirty days after the expiration of each period of six months succeeding such filing, file with the Attorney General a supplement thereto under oath, on a form prescribed by the Attorney General, which shall set forth with respect to such preceding six months' period such facts as the Attorney General, having due regard for the national security and the public interest, may deem necessary to make the information required under section 2 hereof accurate, complete, and current with respect to such period. In connection with the information furnished under clauses (3), (4), (6), and (9) of section 2 (a) hereof, the registrant shall give notice to the Attorney General of any changes therein within ten days after such changes occur. If the Attorney General, having due regard for the national security and the public interest, determines that it is necessary to carry out the purposes of this Act, he may, in any particular case, require supplements to the registration statement to be filed at more frequent intervals in respect to all or particular items of information to be furnished.

"(c) The registration statement and supplements thereto shall be executed under oath as follows: If the registrant is an individual, by him; if the registrant is a partnership, by the majority of the members thereof; if the registrant is a person other than an individual or a partnership, by a majority of the officers thereof or persons performing the functions of officers or by a majority ~~of the board of~~ directors thereof or persons performing the functions of directors, if any.

"(d) The fact that a registration statement or supplement thereto has been filed shall not necessarily be deemed a full compliance with this Act and the regulations thereunder ~~on~~ the part of the registrant; nor shall it indicate that the Attorney General has in any way passed upon the

merits of such registration statement or supplement thereto; nor shall it preclude prosecution, as provided for in this Act, for willful failure to file a registration statement or supplement thereto when due or for a willful false statement of a material fact therein or the willful omission of a material fact required to be stated therein or the willful omission of a material fact or copy of a material document necessary to make the statements made in a registration statement and supplements thereto, and the copies of documents furnished therewith, not misleading.

"(e) If any agent of a foreign principal, required to register under the provisions of this Act, has previously thereto registered with the Attorney General under the provisions of the Act of October 17, 1940 (54 Stat. 1201), the Attorney General, in order to eliminate inappropriate duplication, may permit the incorporation by reference in the registration statement or supplements thereto filed hereunder of any information or documents previously filed by such agent of a foreign principal under the provisions of the Act of October 17, 1940 (54 Stat. 1201).

"EXEMPTIONS

"SEC. 3. The requirements of section 2 (a) hereof shall not apply to the following agents of foreign principals:

"(a) A duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, while said officer is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such officer;

"(b) Any official of a foreign government, if such government is recognized by the United States, who is not a public-relations counsel, publicity agent, information-service employee, or a citizen of the United States, whose name and status and the character of whose duties as such official are of public record in the Department of State, while said official is engaged exclusively in activities which are recognized by the Department of State as being within the scope of the functions of such official;

"(c) Any member of the staff of, or any person employed by, a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State, other than a public-relations counsel, pub-

licity agent, or information-service employee, whose name and status and the character of whose duties as such member or employee are of public record in the Department of State, while said member or employee is engaged exclusively in the performance of activities which are recognized by the Department of State as being within the scope of the functions of such member or employee;

"(d) Any person engaging or agreeing to engage only in private, nonpolitical, financial, mercantile, or other activities in furtherance of the bona fide trade or commerce of such foreign principal or in the soliciting or collecting of funds and contributions within the United States to be used only for medical aid and assistance, or for food and clothing to relieve human suffering, if such solicitation or collection of funds and contributions is in accordance with and subject to the provisions of the Act of November 4, 1939, as amended (54 Stat. 48), and such rules and regulations as may be prescribed thereunder;

"(e) Any person engaging or agreeing to engage only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts;

"(f) Any person, or employee of such person, whose foreign principal is a government of a foreign country the defense of which the President deems vital to the defense of the United States while (1) such person or employee engages only in activities which are in furtherance of the policies, public interest, or national defense both of such government and of the Government of the United States, and are not intended to conflict with any of the domestic or foreign policies of the Government of the United States, (2) each communication or expression by such person or employee which he intends to, or has reason to believe will, be published, disseminated, or circulated among any section of the public, or portion thereof, within the United States, is a part of such activities and is believed by such person to be truthful and accurate and the identity of such person as an agent of such foreign principal is disclosed therein, and (3) such government of a foreign country furnishes to the Secretary of State for transmittal to and retention for the duration of this Act by the Attorney General such information as to the identity and activities of such person or employee at such times as the Attorney General may require. Upon notice to the Government of which such

person is an agent or to such person or employee, the Attorney General, having due regard for the public interest and national defense, may, with the approval of the Secretary of State, and shall, at the request of the Secretary of State, terminate in whole or in part the exemption herein of any such person or employee.

FILING AND LABELING OF POLITICAL PROPAGANDA

"SEC. 4. (a) Every person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act and who transmits or causes to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any political propaganda (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being, or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons shall, not later than forty-eight hours after the beginning of the transmittal thereof, send to the Librarian of Congress two copies thereof and file with the Attorney General one copy thereof and a statement, duly signed by or on behalf of such agent, setting forth full information as to the places, times, and extent of such transmittal.

"(b) It shall be unlawful for any person within the United States who is an agent of a foreign principal and required to register under the provisions of this Act to transmit or cause to be transmitted in the United States mails or by any means or instrumentality of interstate or foreign commerce any political propaganda (i) in the form of prints, or (ii) in any other form which is reasonably adapted to being or which he believes will be, or which he intends to be, disseminated or circulated among two or more persons unless such political propaganda is conspicuously marked at its beginning with, or prefaced or accompanied by, a true and accurate statement, in the language or languages used in such political propaganda, setting forth that the person transmitting such political propaganda or causing it to be transmitted is registered under this Act with the Department of Justice, Washington, District of Columbia, as an agent of a foreign principal, together with the name and address of such agent of a foreign principal and of each of his foreign principals; that, as required by this Act, his registration statement is available for inspection at and copies of

such political propaganda are being filed with the Department of Justice; and that registration of agents of foreign principals required by the Act does not indicate approval by the United States Government of the contents of their political propaganda. The Attorney General, having due regard for the national security and the public interest, may by regulation prescribe the language or languages and the manner and form in which such statement shall be made and require the inclusion of such other information contained in the registration statement identifying such agent of a foreign principal and such political propaganda and its sources as may be appropriate.

"(c) The copies of political propaganda required by this Act to be sent to the Librarian of Congress shall be available for public inspection under such regulations as he may prescribe.

"(d) For purposes of the Library of Congress, other than for public distribution, the Secretary of the Treasury and the Postmaster General are authorized, upon the request of the Librarian of Congress, to forward to the Library of Congress fifty copies, or as many fewer thereof as are available, of all foreign prints determined to be prohibited entry under the provisions of section 305 of title III of the Act of June 17, 1930 (46 Stat. 688), and of all foreign prints excluded from the mails under authority of section 1 of title XII of the Act of June 15, 1917 (40 Stat. 230).

"Notwithstanding the provisions of section 305 of title III of the Act of June 17, 1930 (46 Stat. 688), and of Section 1 of title XII of the Act of June 15, 1917 (40 Stat. 230) the Secretary of the Treasury is authorized to permit the entry and the Postmaster General is authorized to permit the transmittal in the mails of foreign prints imported for governmental purposes by authority or for the use of the United States or for the use of the Library of Congress.

"Books and Records

"Sec. 5. Every agent of a foreign principal registered under this Act shall keep and preserve while he is an agent of a foreign principal such books of account and other records with respect to all his activities, the disclosure of which is required under the provisions of this Act, as the Attorney General, having due regard for the national security and the public interest, may by regulation pre-

scribe as necessary or appropriate for the enforcement of the provisions of this Act and shall preserve the same for a period of three years following the termination of such statutes. Until regulations are in effect under this section every agent of a foreign principal shall keep books of account and shall preserve all written records with respect to his activities. Such books and records shall be open at all reasonable times to the inspection of any official charged with the enforcement of this Act. It shall be unlawful for any person willfully to conceal, destroy, obliterate, mutilate, or falsify, or to attempt to conceal, destroy, obliterate, mutilate, or falsify, or to cause to be concealed, destroyed, obliterated, mutilated, or falsified, any books or records required to be kept under the provisions of this section.

"PUBLIC EXAMINATION OF OFFICIAL RECORDS.

"SEC. 6. The Attorney General shall retain in permanent form one copy of all registration statements and all statements concerning the distribution of political propaganda furnished under this Act, and the same shall be public records and open to public examination and inspection at such reasonable hours, under such regulations, as the Attorney General may prescribe, and copies of the same shall be furnished to every applicant at such reasonable fee as the Attorney General may prescribe. The Attorney General may withdraw from public examination the registration statement and other statements of any agent of a foreign principal whose activities have ceased to be of a character which requires registration under the provisions of this Act.

"LIABILITY OF OFFICERS

"SEC. 7. Each officer, or person performing the functions of an officer, and each director, or person performing the functions of a director, or an agent of a foreign principal which is not an individual shall be under obligation to cause such agent to execute and file a registration statement and supplements thereto as and when such filing is required under sections 2 (a) and 2 (b) hereof and shall also be under obligation to cause such agent to comply with all the requirements of sections 4 (a), 4 (b), and 5 and all other requirements of this Act. In case of failure of any

such agent of a foreign principal to comply with any of the requirements of this Act, each of its officers, or persons performing the functions of officers, and each of its directors, or persons performing the functions of directors, shall be subject to prosecution therefor.

"ENFORCEMENT AND PENALTIES

"SEC. 8. (a) Any person who—

"(1) willfully violates any provision of this Act or any regulation thereunder, or

"(2) in any registration statement or supplement thereto or in any statement under section 4 (a) hereof concerning the distribution of political propaganda or in any other document filed with or furnished to the Attorney General under the provisions of this Act willfully make a false statement of a material fact or willfully omits any material fact required to be stated therein or willfully omits a material fact or a copy of a material document necessary to make the statements therein and the copies of documents furnished therewith not misleading, shall, upon conviction thereof, be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

"(b) In any proceeding under this Act in which it is charged that a person is an agent of a foreign principal with respect to a foreign principal outside of the United States, proof of the specific identity of the foreign principal shall be permissible but not necessary.

"(c) Any alien who shall be convicted of a violation of, or a conspiracy to violate, any provision of this Act or any regulation thereunder shall be subject to deportation in the manner provided by sections 19 and 20 of the Immigration Act of 1917 (39 Stat. 889, 890), as amended.

"(d) The Postmaster General may declare to be nonmailable any communication or expression falling within clause (2) of section 1 (j) hereof in the form of prints or in any other form reasonably adapted to, or reasonbly appearing to be intended for, dissemination or circulation among two or more persons, which is offered or caused to be offered for transmittal in the United States mails to any person or persons in any other American republic by any agent of a foreign principal, if the Postmaster General is informed in writing by the Secretary of State that the duly accredited

diplomatic representative of such American republic has made written representation to the Department of State that the admission or circulation of such communication or expression in such American republic is prohibited by the laws thereof and has requested in writing that its transmittal thereto be stopped.

"APPLICABILITY OF ACT

"SEC. 9. This Act shall be applicable in the several States, the District of Columbia, the Territories, the Canal Zone, the insular possessions, including the Philippine Islands, and all other places now or hereafter subject to the civil or military jurisdiction of the United States.

"RULES AND REGULATIONS

"SEC. 10. The Attorney General may at any time make, prescribe, amend, and rescind such rules, regulations, and forms as he may deem necessary to carry out the provisions of this Act.

"REPORTS TO THE CONGRESS

"SEC. 11. The Attorney General shall, from time to time, make a report to the Congress concerning the administration of this Act, including the nature, sources, and content of political propaganda disseminated or distributed.

"SEPARABILITY OF PROVISIONS

"SEC. 12. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

"SEC. 13. This Act is in addition to and not in substitution for any other existing statute.

"SHORT TITLE

"SEC. 14. This Act may be cited as the 'Foreign Agents Registration Act of 1938, as amended'."

TRANSFER OF ADMINISTRATION

SEC. 2. Upon the effective date of this Act, all powers duties, and functions of the Secretary of State under the Act of June 8, 1938 (52 Stat. 631), as amended, shall be

transferred to and become vested in the Attorney General, together with all property, books, records, and unexpended balances of appropriations used by or available to the Secretary of State for carrying out the functions devolving on him under the above-cited Act. All rules, regulations, and forms which have been issued by the Secretary of State pursuant to the provisions of said Act, and which are in effect, shall continue in effect until modified, superseded, revoked, or repealed.

EFFECTIVE DATE

SEC. 3. This Act shall take effect on the sixtieth day after the date of its approval, except that prior to such sixtieth day the Attorney General may make, prescribe, amend, and rescind such rules, regulations, and forms as may be necessary to carry out the provisions of this Act.

Approved, April 29, 1942.

AGENTS OF FOREIGN PRINCIPALS AND OF FOREIGN GOVERNMENTS

LAWS AND REGULATIONS ADMINISTERED BY THE SECRETARY OF STATE GOVERNING THE REGISTRATION OF AGENTS OF FOREIGN PRINCIPALS AND THE NOTIFICATION OF AGENTS OF FOREIGN GOVERNMENTS

PART I

REGISTRATION OF AGENTS OF FOREIGN PRINCIPALS

Chapter I—Authority

The act approved June 8, 1938 (52 Stat. 631), entitled "AN ACT To require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes," as amended by the act approved August 7, 1939 (Public, No. 319, 76th Cong., 1st sess.) reads as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

(Statute as Amended omitted.)

Under the authority of the aforementioned provisions of law and in compliance therewith, the Secretary of State prescribes the following regulations:

Chapter II—Definitions

As used in these regulations and forms, unless the context otherwise requires—

(1) The term *person* means an individual, partnership, association, or corporation.

(2) The term *Secretary* means the Secretary of State of the United States.

(3) The term *act* means the act approved June 8, 1938 (Public, No. 583, 75th Cong., 3d sess.), entitled "AN ACT To require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes," as amended by the act approved August 7, 1939 (Public, No. 319, 76th Cong., 1st sess.)

(4) The term *section* means a section of the act.

(5) The term *regulations* means all rules, regulations, and forms prescribed by the Secretary pursuant to the act.

(6) The term *government of a foreign country* means any person or group of persons exercising sovereign political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which authority or functions are directly or indirectly delegated or permitted. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority, whether such faction or body of insurgents has or has not bee recognized by the United States.

(7) The term *political party of a foreign country* means any group of persons in a country other than the United States, having for an aim the establishment or the administration of a government or of a governmental system.

(8) The term *person domiciled abroad* means a person who has outside the United States a principal establishment or permanent home.

(9) The term *foreign business* means any entity organized or set up under a jurisdiction of a country other than the United States and having its principal place of business outside the United States, for the purpose of livelihood or profit.

(10) The term *foreign partnership* means an association of two or more persons formed outside the United States to engage jointly in any enterprise or undertaking.

(11) The term *foreign association* means an unincorporated entity or group of persons formed outside the United States and acting for a common purpose.

(12) The term *foreign corporation* means a legal entity created by or under the laws of a country other than the United States.

(13) The term *foreign political organization* means a group of persons organized and existing outside the United States which is engaged in political activity or in any activity devoted in whole or in part to the establishment or the administration of a government or of a governmental system.

(14) The term *public-relations counsel* means any person who directly or indirectly informs, advises, or in any other way represents a principal in any matters pertaining to political interests or public relations or public policy: *Provided, however,* That this term shall not be held to apply to any person by reason of his being engaged in bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts, nor to any person performing only private, nonpolitical, financial, mercantile, or other activities in furtherance of bona fide trade or commerce as such terms are defined in these regulations.

(15) The term *publicity agent* means any person who is directly or indirectly engaged in the placing or disseminating within the United States of oral, written, or pictorial information or matter of any kind for publication in any manner, including publication through advertising, books, periodicals, newspapers, lectures, broadcasts, moving-picture shows, or otherwise: *Provided, however,* That this term shall not be held to apply to any person by reason of his being engaged in the dissemination of material, information, or ideas in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts, nor to any person performing only private, nonpolitical, financial, mercantile or other activities in furtherance of bona fide trade or commerce as such terms are defined in these regulations.

(16) The term *duly accredited diplomatic or consular officer of a foreign government who is so recognized by*

the Department of State of the United States shall include any representative of a foreign government who functions as a diplomatic or consular officer in the United States and whose diplomatic or consular status is of record in the Department of State of the United States.

(17) The term *private activities in furtherance of bona fide trade or commerce* means activities ordinarily and customarily performed by persons for private livelihood or profit, as distinguished from activities of a political or other character, whether or not in the guise of trade or commerce.

(18) The term *nonpolitical activities in furtherance of bona fide trade or commerce* means such activities as are religious, educational, professional, scientific, or related to the fine arts, which do not in any essential respect relate to the establishment or conduct of a government or relations between one government and another.

(19) The term *financial activities in furtherance of bona fide trade or commerce* means activities in which exchange of money or its equivalent is involved through the normal channels of finance, and includes the normal incidents of such transactions.

(20) The term *mercantile activities in furtherance of bona fide trade or commerce* means activities directly concerned with the business of procuring, buying, selling, merchandising, warehousing, forwarding, transporting, or processing goods, products, or property of any kind.

(21) The term *other activities in furtherance of bona fide trade or commerce* as used in subsection (d) of the first section of the act, means services rendered in connection with private activities, nonpolitical activities, financial activities, or mercantile activities as herein defined.

(22) The term *furtherance of bona fide trade or commerce* means engaging in good faith in the lawful exchange of commodities, services, or property of any kind. Such term shall not include any political activities or activities involving the dissemination of information not exclusively concerned with the lawful exchange of commodities, services, or property.

(23) The term *registration statement* means the statement submitted to the Secretary for filing pursuant to the terms of the act and includes all documents and papers supplementary thereto.

(24) The term *registrant* means the person named in the registration statement and in whose behalf the registration statement is submitted to the Secretary for filing.

Chapter III—Outline of Act

The act requires the registration of:

any person who *acts* or *engages to act* or *agrees to act as*

public-relations counsel,
publicity agent,
agent,
servant,
representative,
attorney for, or

any person who receives compensation from, or is under the direction of:

the government of a foreign country,
a political party of a foreign country,
a person domiciled abroad,
a foreign business,
a foreign partnership,
a foreign association,
a foreign corporation,
a foreign political organization or a domestic organization subsidized directly or indirectly in whole or in part by any of the above.

The *only* persons within these categories exempt from the requirement of registration under the act are:

persons who function in the United States as diplomatic or consular officers and whose diplomatic or consular status is of record in the Department of State of the United States,

persons performing only:

private activities in furtherance of bona fide trade or commerce,
nonpolitical activities in further of bona fide trade or commerce,
financial activities in furtherance of bona fide trade or commerce,
mercantile activities in furtherance of bona fide trade or commerce,
other activities in furtherance of bona fide trade or commerce, or

activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits, or of the fine arts,

and persons whose status is described in either of the following two paragraphs:

(1) Any official of a foreign government recognized by the United States as a government, other than a public-relations counsel or publicity agent or a citizen of the United States, whose status and the character of whose duties as such official are of record in the Department of State of the United States.

(2) Any member of the staff of or person employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States, other than a public-relations counsel or publicity agent, whose status and the character of whose duties as such member or employee are of record in the Department of State of the United States.

Chapter IV—Section 2 of the Act

(1) Every person required to register under the terms of section 2 of the act and regulations issued pursuant thereto, shall submit to the Secretary a registration statement on a form similar to that printed below. Registration statements must be signed and sworn to before a notary public or other person authorized by law to administer oaths before they are transmitted to the Secretary of State. Blank forms will be furnished by the Secretary upon request.

Registration No. .....

Date of Registration .....

(Not to be filled in by registrant)

UNITED STATES OF AMERICA

DEPARTMENT OF STATE

REGISTRATION STATEMENT

For persons required to register with the Secretary of State pursuant to section 2 of the act (Public, No. 583, 75th

Cong., 3d sess.), approved on June 8, 1938, as amended by the act (Public, 319, 76th Cong., 1st sess.), approved August 7, 1939.

(NOTE.—ALL spaces must be filled in. Where space in the registration statement form does not permit full answers to questions, the information required may be set forth in supplementary papers incorporated by reference in the registration statement and submitted therewith. Supplementary documents and papers must be referred to in the principal statement in chronological or other appropriate order and be described in such manner that they can be easily identified.)

1. Name of registrant .....
2. Status of registrant (individual, partnership, association, or corporation) .....
3. Principal business address .....
4. Other places of business in the United States or elsewhere .....

5. Residence address, or addresses, if more than one .....

6. If registrant is a partnership, names and addresses of partners; if a corporation or association, names and addresses of officers thereof .....

7. Name of foreign principal, or principals, if more than one, for which registrant is acting as agent .....

8. Address, or addresses, if more than one, of foreign principal .....

9. Nationality of foreign principal, or principals, if more than one .....

10. Nature of business of foreign principal, or principals .....

11. Comprehensive statement of nature of business of registrant .....

12. Identification of all contracts of employment or other documents submitted herewith to indicate in complete detail the nature of the employment of registrant and the terms and conditions thereof. If contract is oral, a full statement of the terms and conditions thereof must be submitted herewith and identified herein .....

13. The following information must be furnished, whether contract of employment of registrant is written or oral:

(*a*) Dates of contracts under which registrant is employed .....

(*b*) Dates of commencement of activity thereunder .....

(*c*) Periods of duration of contracts of employment. (If not known definitely, approximations may be made.) .....

14. Compensation to be paid to or income to be received by registrant and form and time of payment, under contracts or terms of employment, or otherwise .....

15. Names of all foreign principals, or other persons or organizations which have contributed, do now contribute, or have undertaken to contribute, to compensation referred to in paragraph 14 above .....

16. If registrant is a partnership, association, or corporation, identify documents and instruments, whether charter; articles of incorporation, copartnership, or association; constitution; bylaws; or other documents or instruments relating to registrant's organization, powers, and purposes, submitted herewith in compliance with the act .....

17. (*a*) Nationality of registrant .....

(*b*) If American-born, date and place of birth .....

(*c*) If naturalized, date and place of naturalization .....

(*d*) If alien, indicate type of travel document and nature of entry into the United States (whether for business or pleasure, temporary or permanent, etc.), including date, port of entry, type and date of visa, country of origin, country from which entry was made, etc .....

18. Official designation of registrant .....

19. Date of execution of Registration Statement .....

The undersigned swears (affirms) that he has read the act (Public, No. 583, 75th Cong., 3d sess.), approved on June 8, 1938, as amended by the act (Public, No. 319, 76th Cong., 1st sess.), approved August 7, 1939, and the regulations issued pursuant thereto; that he is familiar with the contents of this Registration Statement submitted pursuant to such act and regulations, and with the contents of the documents supplementary thereto which are incorporated therein and constitute a part thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

(If registrant is a partnership, association, or corporation, the signature shall be that of the duly authorized representative.)

.....
(Signature of registrant)

.....
(Type or print name)

Subscribed and sworn to before me at ....., this ..... day ....., 19....

.....
(Title)

My commission expires ....., 19....

(2) Registration statements should be in English. If in a foreign language, they must be accompanied by an English translation, certified under oath by the translator, be-

fore a notary public or other person authorized by law to administer oaths for general purposes, as a true and accurate translation. The statements, with the exception of signature, should be typewritten but will be accepted if written legibly in ink.

(3) All spaces in the registration statement form must be properly filled in. Registration statements found not to be in proper form or lacking in essential details will not be accepted by the Secretary for filing, and such registration statements shall not be deemed to have been filed in compliance with the act.

(4) Where space in the registration statement form does not permit full answers to questions, the information required may be set forth in supplementary papers incorporated by reference in the registration statement and submitted therewith. Supplementary documents and papers must be referred to in the principal statement in chronological or other appropriate order and be described in such manner that they can be easily identified.

(5) Acceptance by the Secretary of a registration statement submitted for filing shall not necessarily signify a full compliance with the act on the part of the registrant, and such acceptance shall not preclude prosecution as provided for in the act for a false statement of a material fact or the willful omission of a material fact required to be stated therein.

(6) The date on which a registration statement, executed in full compliance with the act and regulations, is received by the Secretary for filing, shall be considered the date of the filing of such registration statement pursuant to the act.

(7) Papers and documents already filed with the Secretary pursuant to the act may be incorporated by reference in any registration statement subsequently submitted to the Secretary for filing, provided such papers and documents are adequately identified in the registration statement in which they are incorporated by reference.

(8) Every registration statement executed and submitted to the Secretary by or on behalf of a partnership, association, or corporation, shall contain or be accompanied by a concise statement of the applicable provisions of the partnership agreement, articles of incorporation, bylaws or similar documents, indicating the right of the person

who signs and submits the registration statement for filing to take such action on behalf of the partnership, association, or corporation, and a statement under oath that all such requirements have been complied with and that the person signing and submitting the registration statement is fully authorized to do so.

(9) A separate registration statement, under the act, must be filed with the Secretary by each person required to register.

(10) The Secretary should be notified promptly upon the cessation of the agency or activity by virtue of which a person has been required to file a registration statement or submit information to the Secretary pursuant to the act and regulations prescribed thereunder.

(11) The filing of a registration statement by a partnership, association, or corporation shall not preclude the necessity of the filing of a similar registration statement, as required under the act, by such individual members, employees, associates, and affiliates of such registrant, as are required to register under the act.

(12) Agents of foreign principals who engage, whether or not on behalf of their foreign principal, in activities not included among the exceptions set forth in the act and regulations shall be considered subject to the requirement of registration.

(13) Registration pursuant to the act is required in the case of agents of foreign principals only. Subagents are not considered subject to the requirement of registration. A subagent is considered to be a person who is not engaged in any activities of a responsible character and who acts under the immediate and direct supervision of a registered agent or whose name, address, and functions are set forth in the registration statement submitted by the agent.

(14) Branch offices or subsidiaries of a registrant engaged in the same activity as that of such registrant will not be required to file separate registration statements if their names and addresses are included in the registration statement filed by the registrant pursuant to the act.

(15) Subsidiary or branch agencies of foreign entities in the United States are considered as occupying a dual status, i. e., that of a foreign principal and that of an agent of a foreign principal, and hence in their latter capacity are required to register if engaged in activities of a charac-

ter not specifically excepted by the terms of the act and regulations. Officers of such agencies, however, need not register if their names and positions are indicated in the registration statement submitted by the agency.

(16) Associations and organizations, the membership of which includes one or more foreign principals, shall, to the extent of such foreign membership, be considered agents of foreign principals, and hence subject to the requirement of registration pursuant to the act unless their activities are of a character specifically excepted by the terms of the act and regulations.

(17) Activities connected in any way with the establishment or conduct of a foreign government shall not be considered to fall within any of the exceptions described in paragraphs (14) to (22), inclusive, of chapter II, part I, of the regulations, and persons undertaking to engage in such activities shall be considered subject to the requirement of registration.

(18) The status of officials of foreign governments and members of the staff of or persons employed by duly accredited diplomatic or consular officers of foreign governments, claiming exemption from the requirement of registration under the provisions of the first section of the act, should be regularized by a notification addressed to the Secretary of State. Such notification must include the full name, nationality, business and residence addresses of the person claiming exemption from the requirement of registration under the act, together with the name of the foreign government being served, a detailed statement of the present and proposed activities of such person, and an indication of the date of assumption of duties in the United States and the approximate duration thereof.

(19) Notification under paragraph (18) above must be renewed whenever the purpose, scope, or nature of the agency described therein is changed, and in any case every 12 months throughout the duration of the agency.

(20) Persons who have submitted information in full compliance with the provisions of paragraph (18) above, shall be considered to have complied with the provisions of the act of June 15, 1917 (40 Stat. 226; 22 U. S. C. 233), so far as such provisions relate to the requirement of notification to the Secretary of certain agents of foreign governments in the United States.

(21) The Secretary of State should be informed promptly upon the termination of activities described in notifications submitted pursuant to the provisions of paragraph (18) above.

(22) The Secretary may withdraw from the public records the registration statement of any person whose activities have ceased to be of a character which requires registration under the terms of the act. Requests for such withdrawals shall be submitted to the Secretary in the form of an affidavit subscribed and sworn to before a notary public, identifying the registration statement, the withdrawal of which is desired, and stating that the agency relationship described therein has been terminated and that the activities of the registrant under such agency relationship have ceased. Registration statements which are withdrawn from the public records under the provisions hereof will be retained in the permanent files of the Department of State.

Chapter V—Section 3 of the Act

(1) Every person required to submit statements to the Secretary for filing in compliance with the terms of section 3 of the act and under the regulations issued pursuant to the act shall submit such statements under oath on a form similar to that printed below. Blank forms will be furnished by the Secretary upon request.

(2) The regulations set forth under chapter IV, part I, hereof, with respect to registration statements submitted to the Secretary under section 2 of the act, shall apply with equal force and effect to statements required to be submitted to the Secretary for filing under section 3 of the act.

Registration No. .....

Date of Registration .....

(Not to be filled in by registrant)

UNITED STATES OF AMERICA

DEPARTMENT OF STATE

SUPPLEMENTAL REGISTRATION STATEMENT

For persons required to submit statements to the Secretary of State for filing in compliance with section 3 of the

act (Public, No. 583, 75th Cong., 3d sess.), approved on June 8, 1938, as amended by the act (Public, No. 319, 76th Cong., 1st sess.), approved August 7, 1939.

(NOTE: Except in paragraph 1, if answers would be exactly the same as answers made to similar questions in a previous statement filed with the Secretary under the act of June 8, 1938, the word "same" may be written in the appropriate spaces below with an indication of the number and date of the previous statement filed. All spaces must be filled in.)

1. Name of registrant .....
2. Status of registrant (individual, partnership, association, or corporation) .....
3. Principal business address .....
4. Other places of business in the United States or elsewhere .....
5. Residence address, or addresses, if more than one .....
6. If registrant is a partnership, names and addresses of partners; if a corporation or association, names and addresses of officers thereof .....
7. Name of foreign principal, or principals, if more than one, for which registrant is acting as agent .....
8. Address, or addresses, if more than one, of foreign principal .....
9. Nationality of foreign principal, or principals, if more than one .....
10. Nature of business of foreign principal, or principals .....
11. Comprehensive statement of nature of business of registrant .....

12. Identification of all contracts of employment or other documents submitted herewith to indicate in complete detail the nature of the employment of registrant and the terms and conditions thereof. If contract is oral, a full statement of the terms and conditions thereof must be submitted herewith and identified herein .....

.....

.....

13. The following information must be furnished, whether contract of employment of registrant is written or oral:

(*a*) Dates of contracts under which registrant is employed .....

.....

.....

(*b*) Dates of commencement of activity thereunder .....

.....

.....

(*c*) Periods of duration of contracts of employment. (If not known definitely, approximations may be made.) .....

.....

.....

14. Compensation to be paid to or income to be received by registrant and form and time of payment, under contracts or terms of employment, or otherwise .....

.....

.....

15. Amount and form of compensation received by registrant during period of 6 months immediately succeeding last statement filed with the Secretary pursuant to the act .....

.....

.....

16. If registrant is a partnership, association, or corporation, identify documents and instruments, whether charter; articles of incorporation, copartnership, or association; constitution; bylaws; or other documents or instruments relating to registrant's organizations, powers and purposes, submitted herewith in compliance with the act .....

.....

.....

17. (*a*) Nationality of registrant .....

(*b*) If American-born, date and place of birth .....

.....

(*c*) If naturalized, date and place of naturalization .....

(*d*) If alien, indicate type of travel document and nature of entry into the United States (whether for business or pleasure, temporary or permanent, etc.), including date, port of entry, type and date of visa, country of origin, country from which entry was made, etc .....

18. Official designation of registrant .....

19. Date of execution of Registration Statement .....

The undersigned swears (affirms) that he has read the act (Public, No. 583, 75th Cong., 3d sess.), approved on June 8, 1938, as amended by the act (Public No. 319, 76th Cong., 1st sess.), approved August 7, 1939, and the regulations issued pursuant thereto; that he is familiar with the contents of this Supplemental Registration Statement submitted pursuant to such act and regulations, and with the contents of the documents supplementary thereto which are incorporated therein and constitute a part thereof, and that the facts therein set forth are true to the best of his knowledge, information, and belief.

(If registrant is a partnership, association, or corporation, the signature shall be that of its duly authorized representative.)

.....
(Signature of registrant)

.....
(Type or print name)

Subscribed and sworn to before me at .....
....., this ..... day of ....., 19 ..

.....
(Title)

My commission expires ....., 19 ..

Chapter VI—Inspection of Registration Statements

(1) Registration statements filed with the Secretary pursuant to the act will, with the exception of statements withdrawn under the provisions of paragraph (22), chapter IV, part I, above, be available for public inspection in the Department of State, Washington, D. C., during all business hours, i. e., from 9 a. m. to 4:30 p. m. on each business day excepting Saturday, and from 9 a. m. to 1 p. m. on Saturdays.

FILED
JAN 5 1943
CHARLES ELMORE CROPLEY
CLERK

NO. 458

IN THE

Supreme Court of the United States

OCTOBER TERM 1942

GEORGE SYLVESTER VIERECK,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent,

ON CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR PETITIONER.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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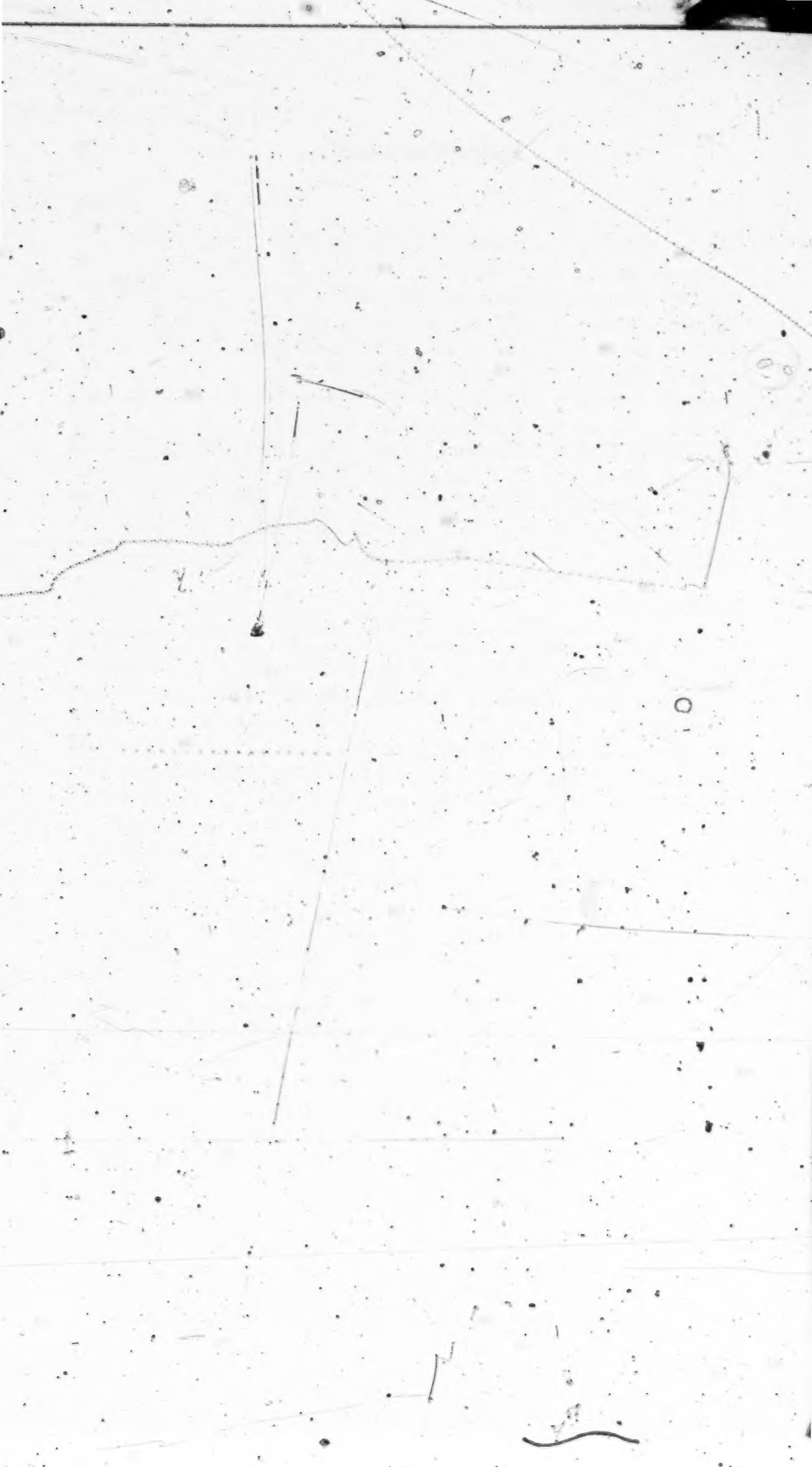

IN THE

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OCTOBER TERM 1942

NO. 458

GEORGE SYLVESTER VIERECK,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent,

ON CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR PETITIONER.

JURISDICTION.

This Court granted a writ of certiorari on November 14, 1942, to review this case except with respect to the first question presented by the petition which raised for the first time the jurisdictional question as to the validity of the indictment, because of the purported extension of the grand

jury from the July 1941 to the October 1941 Term of the District Court of the United States for the District of Columbia and which grand jury brought in the indictment during the extended term. 87 U. S. Law ed. 132.

The jurisdiction of this Court to grant the writ of certiorari to review the judgment of September 21, 1942, by the United States Court of Appeals for the District of Columbia is found in Section 240 of the Judicial Code as amended (28 U. S. C. 347). See also Rule XI of the Rules of Practice and Procedure in Criminal Cases, promulgated by this Court May 7, 1934.

OPINION BELOW.

The trial court wrote no opinion in the case. The opinion of September 21, 1942, by the United States Court of Appeals for the District of Columbia has not been reported. However, this opinion is contained in the Record (R. 328).

STATEMENT OF THE CASE.

The Indictment.

A non-interventionist with respect to the affairs of Europe since at least 1914, or for more than a quarter of a century, and a registered agent of: (1) a Munich newspaper (*Muenchner Neueste Nachrichten*) from September 26, 1939 (R. 20) to September 8, 1941 when that agency contract was cancelled (R. 90), and of (2) the German Library of Information from October 12, 1939 (R. 25-26) to July 2, 1941, when that contract, too, was cancelled (R. 52-53), petitioner was indicted on October 8, 1941 (R. 319) by a grand jury impaneled, sworn and charged during the July 1941 Term of the trial court and the life of which jury the trial court purported to extend into the October 1941 Term of said court.

The indictment was in five counts. Counts I and IV related to original registration statements which petitioner

filed on forms prescribed by the Secretary of State while Counts II, III, and V related to supplemental registration statements which petitioner likewise filed on forms prescribed by that official. The indictment in each of the five counts charged that the petitioner "unlawfully, willfully, feloniously and knowingly omitted to state and set forth the fact" of certain alleged activities named in the respective counts when he answered "Author and Journalist" to paragraphs 11 of the two original and three supplemental registration forms which required, in identical terms, that he:

> "Give a comprehensive statement of nature of business of registrant."[1]

The first original registration statement—covered by Count 1 of the indictment—was filed with the Secretary of State on September 26, 1939 (R. 20) for the Munich newspaper, and to this registration statement, the Secretary of State attached the contract between petitioner and the German Library of Information (R. 25-26) which petitioner had sent with his letter of October 7, 1939 to the Secretary

---

[1]Mr. Hickey, one of Government counsel in the case, stated to the jury panel that: "Now, the defendant is an admitted propagandist" (Tr. 31) to which counsel for petitioner objected. Again Mr. Hickey stated that petitioner "is charged by the Government with willfully omitting to state material facts concerning the nature and extent of his propaganda activities required under the act to be disclosed and made known to the American public." (Tr. 32). Again counsel for petitioner objected but the court stated "I see no trouble about it. I think inquiry is a proper one. You may proceed" (Tr. 32-33).

Mr. Maloney suggested to the trial court, in the presence of the jury panel that the court inquire whether despite the opinion of a member of the panel on the subject of propaganda: *"if he still feels that he could give this defendant a fair trial on the evidence presented in this courtroom and lay aside entirely his feeling that although he had been unpatriotic, we, of course feel that he is entitled to a fair trial just like anybody else regardless of whether they have been patriotic or not."* (Tr. 57). (Italics mine.)

of State (R. 83) and the letter so notified the petitioner in letter of October 12, 1939 (R. 84). This contract was subsequently expanded and the compensation increased in another contract dated January 25, 1941 (R. 48-50) which was attached to a supplemental statement filed April 25, 1941 (R. 44-50).

The second original registration statement—covered by Count IV of the indictment—was filed on March 17, 1941 (R. 37-41). Under this registered contract the petitioner agreed to act as the publisher in America of a book entitled, *The One Hundred Families That Rule the Empire.*[2] The indictment was filed before a supplemental registration statement was due under this second original registration. The three supplemental registration statements under the first original registration—and which three supplemental registrations were respectively the subject of Counts II, III and V of the indictment—were filed on or about April 26, 1940 (R. 30-34); October 25, 1940 (R. 30-34) and April 25, 1941 (R. 44-50).

Thus during the period from September 26, 1939, when the first original registration statement was filed, to April 25, 1941, when the third and last supplemental registration statement was filed, there was in effect the Neutrality Act of November 4, 1939, c. 2 (54 Stat. 4), (22 U. S. C. 441-452), except for the short period from September 26, to November 3, 1939. Further, during all of this period—to and after the date of the indictment—the United States maintained diplomatic relations with the German Reich.

In addition, the petitioner cancelled his contracts of employment with the German Library of Information on July 2, 1941 (R. 52-53) and the State Department was advised by petitioner of such cancellation in letter of July 16, 1941 (R. 51). The contract with the Munich newspaper was can-

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[2] There had been published in the United States in 1937, by the Vanguard Press, *America's Sixty Families*, by Ferdinand Luneberg purporting to describe the Sixty Families who ruled the United States.

celled and the Secretary of State advised thereof in letter dated September 8, 1941, from petitioner (R. 90). The contract with Wirsing was completed by the publication of the book.

The Court will take judicial notice of the fact that during a part of this period covered by the original and supplemental registration statements filed by petitioner, a political campaign was waged in the United States for the office of President of the United States and that the candidates of the two principal political parties advocated the keeping of the United States out of the war then raging on three continents. It was not until the Act of November 17, 1941, c. 473, (55 Stat. 764), that the Neutrality Act of November 4, 1939, was substantially repealed and until the Lend-Lease Aid Act of February 7, 1942, c. 46 (56 Stat. 82) that Lend-Lease aid was provided for the Allied Nations.

Petitioner's contracts were cancelled and terminated long before the Act of November 17, 1941, and long before Pearl Harbor on December 7, 1941, and the resulting declaration of war against the Axis powers—the contract with the German Library of Information having been cancelled on July 2, 1941, and the one with the Munich newspaper on September 8, 1941. It is most important for an understanding of this case to bear in mind the chronology of these facts.[8]

[8]It was on February 6, 1942, that the Government's chief prosecuting attorney, Mr. William Power Maloney, stated in open court and in the presence of the press representatives, in opposing clemency for one Hill who had been convicted of perjury for denying that he knew petitioner, that:

> "This man is still shielding Viereck, a sworn enemy of this country." (R. 230-231).

The Attorney General of the United States was officially notified by counsel for petitioner that: "Such statement was prominently published by every newspaper in the District of Columbia. It was even the basis of an editorial in the Washington Post." (R. 232-233).

Also, in his opening statement to the trial jury, Mr. Maloney stated with reference to the petitioner:

Petitioner's Answer to Paragraphs 11 of the Original and Supplemental Registration Forms.

The requirement in Paragraphs 11 of the two original and the three supplemental registration forms was a generic requirement that a registrant:

> "Give a comprehensive statement of nature of business of registrant."

The answer "Author and Journalist" was a generic answer. Petitioner is an author of considerable note, having

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> "And in addition to his literary efforts, self-proclaimed master of the insidious art of propaganda, George Sylvester Viereck, self-proclaimed master of the insidious art of propaganda, not alone in this war but in the last war as well, at which time he was also in the employ of the German government as you ladies and gentlemen shall see as well as hear." (Tr. 186).

In answer to the objections of counsel for petitioner to such statements (Tr. 186), the trial court stated that he would "ask Mr. Maloney to be as brief as he can." (Tr. 187).

And notwithstanding that petitioner had ceased long before the United States entered the war to be an employee of any foreign principal, Mr. Maloney stated in his closing argument to the jury that:

> "In closing, let me remind you, ladies and gentlemen, that this is war. This is war, harsh, cruel, murderous war. There are those who, right at this very moment, are plotting your death and my death; plotting our death and the death of our families because we have committed no other crime than that we do not agree with their ideas of persecution and concentration camps."
>
> "This is war. It is a fight to the death. The American people are relying upon you, ladies and gentlemen, for their protection against this sort of crime, just as much as they are relying upon the protection of the men who man the guns in Bataan Peninsula, and everywhere else. They are relying upon you, ladies and gentlemen for their protection. We are at war. You have a duty to perform here."
>
> "As a representative of your government I am calling upon every one of you to do your duty." (R. 159).

written many books and magazine articles since at least 1907 (R. 168). It was conceded by the chief prosecuting attorney that the "Government has never maintained anything other than that this man was a prolific writer.*** I am willing to concede that he wrote a lot of articles, or whatever the number is, for *Liberty.*" (R. 175). Also, "before going further it might be well to introduce you ladies and gentleman to this defendant, George Sylvester Viereck, Poet-Extraordinary, Author over a long period of time of a number of books, including such masterpieces as "The Kaiser on Trial', 'My First 2,000 Years', 'Salome, the Wondering Jewess' and many others." (Tr. 186).

With respect to the answer of petitioner to this paragraph 11 of the supplemental registration statements, it is to be noted that: Crabb's *English Synonyms* (Harper's New Edition with Additions and Corrections), at pages 170-171, defines "business" as follows:

> "BUSINESS signifies what makes *busy*, v. *Active*, busy. OCCUPATION, from *Occupy*, in French *occuper*, Latin, occupo, that is *ob* and *capio* signifies that which serves or take possession of a person or thing to the exclusion of other things. EMPLOYMENT, from *employ*, in French *emploi*, Latin, *implico*, Greek * * *— signifies that which engages or fixes a person. ENGAGEMENT, v. *to attract*. AVOCATION, in Latin *avocatio*, from *a* and *voco*, signifies the thing that calls off from another thing.
>
> *Business* occupies all a person's thoughts as well as his time and powers; *ocupation* and *employment* occupy only his time and strength; the first is mostly *regular*, it is the object of our choice; the second is *casual*, it depends upon the will of another. *Employment* is a partial *employment*, *avocation* a particular *engagement;* an engagement prevents us from doing anything else; an *avocation* calls off or prevents us from doing what we wish. Every tradesman has a *business*, on the dilligent prosecution of which depends his success in life; every mechanic has his daily *occupation*, by which he maintains his family; every laborer has an *employment*, which is fixed for him. Business and occu-

pation always suppose a serious object. *Business* is something more urgent and important than *occupation;* a man of independent fortune has no occasion to pursue *business* but as a rational agent he will not be contented to be without an *occupation.* * * *

BUSINESS, v. *Business, occupation.* Trade signifies that which employs the time by way of *trade.* PROFESSION signifies that which one professes to do. ART signifies that which is followed in the way of the *Arts.* These words are synonymous in the sense of a calling, for the purpose of a livelihood: *Business* is general, *trade* and *profession* are particular; all trade is business, but all business is not trade; but the exercise of one's knowledge and experience for purpose of gain constitutes a business; brokers, manufacturers, bankers, and others carry on a *business;* clergymen, medical or military men, follow a *profession;* musicians and painters follow an *art.* * * * ".

Petitioner, as an author and journalist all of his mature life, followed a business of writing books, poems, and magazine articles. When he was asked in Paragraphs 11 of the registration forms to give a comprehensive statement of the nature of his business, he rightfully and correctly answered: "Author and Journalist." As he was not proven to be a man of independent means, it must be assumed that as a "prolific writer" of books and magazine articles, he was writing to earn a livelihood and that was his business.

In fact, it was precisely as an author and journalist that he contracted to serve the Munich newspaper and the German Library of Information and he in fact did so serve them.

Counts in Indictment Relating to Original Registration Statements Stricken Therefrom on Demurrer.

Petitioner filed a demurrer to the indictment (R. 53, 319). The District Court, Goldsborough, J. sustained this demurrer as to Counts I and IV relating to the three agencies for foreign principals covered by the two original regis-

tration statements. However, he overruled the demurrer as to Counts II, III and V of the indictment relating to the three supplemental registration statements (R. 56, 319). The trial was set for January 12, 1942 on these three counts (R. 320). A motion for a bill of particulars was filed on January 7, 1942, but denied by Judge Goldsborough on January 19, 1942 (R. 1320).

Government Prosecutor Filed Affidavit of Bias and Prejudice Against Judge Goldsborough.

Judge Goldsborough had set the petitioner's case down for trial before him but on the same day that he denied the motion for a bill of particulars, Mr. William Power Maloney, the Government's chief counsel before the grand jury in obtaining the indictment and the chief trial counsel, filed an affidavit of bias and prejudice against the said Judge. He directed the entry of an order on the same day denying the motion based on such affidavit (R. 320). The next day, January 20, 1942, this affidavit of bias and prejudice was withdrawn (R. 320). The case was assigned to Letts, J. for trial but a copy of the affidavit of bias and prejudice filed by Mr. Maloney was made by petitioner a part of his motion for a change of venue and thus the said affidavit was retained in the record (R. 60-69).

The motion for change of venue was denied but renewed before Letts, J. at the commencement of the trial and again denied (R. 228-234, 322).

The Trial and Conviction of Petitioner.

The preceding summary of record facts is sufficient to show to this Court the setting of the stage for the conviction of the petitioner, without ever proving or attempting to prove that the alleged "activities" charged in Counts II, III and V of the indictment were engaged in by petitioner for or on behalf of any foreign principal or that petitioner received a single dime from any of his three foreign princi-

pals for engaging in such "activities" and that neither Section 30 of the 1938 Act as amended, nor Paragraphs 11 of the registration forms required him to report them.

The trial court's instructions to the jury removed all necessity for any such showing on the part of the prosecution (R. 101-104). In giving these instructions—granting the prayers of the prosecution and denying the contrary prayer of the petitioner (R. 96-101)—the fate of this petitioner was sealed before this jury. Under such instructions it could not have done otherwise than bring in a verdict of guilty as charged in the indictment.

(a)

How this was accomplished.

The conviction of the petitioner was accomplished primarily by three things: (1) The introduction at the outset of the prosecution evidence of a book, *Spreading Germs of Hate*,—which was published serially by the petitioner in the *Saturady Evening Post* and later, 1930, in book form—concerning propaganda activities in the United States on the part of England, France, Germany, Italy, and the United States prior to, and during the first World War, from 1914 to 1918, and the reading of copious extracts therefrom to the jury during the progress of the trial; (2) by linking the non-interventionist activities of the petitioner with the non-interventionist activities of prominent members of the Senate and House of Representatives; and (3) the attempt to show—which was never accomplished except by the most tenous evidence—that the petitioner was associated with others in the formation and conduct of certain non-interventionist Committees.

(1)

The Introduction and Use of Spreading Germs of Hate.

It is one of the ironies of fate that this book (Gov. Ex. 12) should have been admitted in evidence against the petitioner and should have been used as one of the most potent weapons to bring about his conviction. Col. Edward M. House in his foreword of March 5, 1930, to the book stated that it would serve "to remind us how foolish and partisan we can be in times of high emotional tension" and now:

> "That the world has become calm and reason once more rules, we can read with pleasure and interest such a book as Mr. Viereck has written, and wonder how and why we so nearly lost our balance during the trying days of the Great War."

The petitioner stated in his Introduction to the book that if it "contains dynamite, I explode it not to work havoc but to clear away much poisonous rubbish" and that:

> "Propaganda is the primary weapon of the world's invisible government. The microbes it scatters infect humanity like a plague. My book is an attempt to administer an antidote or a serum against this scourge by inculcating Propaganda Resistance. No one can escape the propagandist. But if we become propaganda-conscious, we may in time develop a measureable degree of immunity. With this object in view, I narrate here, for the first time, the part played by propaganda in the United States during and after the War." (Pp. xii-xiii).

This book, which examines the propaganda activities of England, France, Germany, Ireland, and the United States in this Country during and after the first World War was received in evidence under the following circumstances:

By Mr. Maloney:

"Q. Tell us about some of the stuff that is not poetry that he has written. A. 'Spreading Germs of Hate.'

"Q. Did he tell you that he had written a book by that title? A. Yes, sir.

"Q. Did you ever see it in his library at 305 Riverside Drive, New York City? A. Yes, I have seen it.

"Q. I show you this book, 'Spreading Germs of Hate' by George Sylvester Viereck (handing book to witness). Is that the book he wrote? A. Yes.

"Mr. Morosini: It is not a question of the fact that defendent wrote this book, 'Spreading Germs of Hate,' we merely object to it at this time or object to any reference to it at this time on the ground that it is not properly a part of the Government's case or has any reference to it, as far as the Government's case is concerned, and does not come within the indictment.

"The Court. It may be received. Has it been offered?

"Mr. Maloney. It has been offered.

"The Court. It may be marked in evidence.

"(Government Exhibit No. 12 is marked in evidence)" (R. 123).

This is the book, which prior to this occurrence, the Government's Chief Prosecuting attorney, Mr. William Power Maloney, had held aloft to the jury in his opening statement and said:

> "Ladies and gentlemen, in the course of this trial I will give you a definition of 'propaganda'—I will give you the definition of what it is, that the defendent himself makes, what he considers propaganda to be, and I submit to you, ladies and gentlemen, it is a pretty good definition of 'propaganda.'
>
> "I hold here in my hand a book. This book will be the text of the Government and the obituary of this defendent.
>
> "The title is 'Spreading Germs of Hate,' by George Sylvester Viereck.

"* * * Now, the Government will show in this case that the aim of the German propaganda, as it was carried out by this defendent, was threefold, and is threefold, or was, rather, up until December 7th.

"The first of these objectives was to strengthen Germany; the second to weaken her enemies; and third to keep America out of war.

"These are the three objectives of the present German propaganda. I might add that they differ in not one respect from the objectives of German propaganda in the last war, as we will show you.

"We will show you, and I submit this is proper as bearing upon prior similar acts of this defendent, that this defendent was one of the three masterminds of the German propaganda in the last war. In fact he was a member of what was then known as the German propaganda cabinet in this country, and here we have, as you will see, an identical picture following the same lines, and seeking to obtain the same objective." (Tr. 188-189).

This is the same book that Mr. Maloney again held aloft to the jury in his closing argument to the jury and stated that this book "was the text of the Government and the epitaph of this defendant" (R. 134).

This is the same book from which Mr. Maloney wrenched a statement on page 76 that:

"In the battle of propaganda that now ensued, those American citizens of German descent who had taken up the cudgels for Germany were called 'disloyalist,' 'traitors' and 'Huns' by the pro-Allies. Colonel Watterson denounced the editor of The Fatherland as a 'venom-bloated toad of treason.'

and stated to the jury in his closing argument that:

"You have heard him described variously as good, patriotic American citizen; as a great author and journalist; as a man who wanted to do an honest job for America, and all the rest of it.

"Now I will give you a description of himself from his own book: 'A venom-bloated toad of treason.'

"Ladies and gentlemen, he must have thought well of that description. He must have thought it pretty accurate because he printed it in his own book at page 76. That is a description to which I do not care to add a single word." (R. 138).

This is the same book from which Mr. Maloney quoted in his examination of Congressman Hamilton Fish as follows:

"Speaking of patriotism, then, Mr. Fish, you do not agree with the defendent Viereck when he wrote as follows: 'It has been said that patriotism is the last resort of the scoundrel.' " (R. 134).

Also, it is the same book to which Mr. Maloney referred in his redirect examination of Congressman Fish, whose views in the subject had never been heard by the jury, as follows:

"Q. Do you know, Mr. Fish, that in 1930 this good American citizen, Mr. Viereck, wrote a book called 'Spreading Germs of Hate' in which he said, and I quote from page 65, 'The objective of German propaganda was three-fold; to strengthen and replenish Germany; to weaken and embarrass Germany's foes, and to keep America out of the war?' Do you know that he wrote such a book? A. No, I do not, I have never read the book.

"Q. Is it not a coincidence that his views as a German propagandist coincide so closely with your views as a Congressman at this time? A. No, it is not. How do you mean? I don't understand that question at all. What do you mean by it?

"Mr. Maloney. I have no further questions." (R. 133-134).

No possible opportunity seems to have been overlooked by the prosecution to impress upon the jury that petitioner was a "propagandist" and that he had written a book on propaganda. It was not overlooked in the Government's brief in opposition to the petition in this Court for a writ of certiorari. When Government witness Spielman was

on the stand, the Government prosecutor inquired apropos of absolutely nothing to which the witness had theretofore testified:

> "Q. Have you ever read this book. Government's exhibit 12, by George Sylvester Viereck and entitled 'Spreading Germs of Hate?' A. No. Perhaps I should have." (R. 132).

The prosecutor then read the last sentence in the last paragraph on page 118 of the book, which was likewise apropos of nothing being presented to the jury, the sentence being:

> "Nevertheless, German propaganda in the United States cannot be pronounced a failure if its object was to keep America out of the war from August 1914 to April 1917." (R. 133).

After having read this sentence, the prosecutor then inquired of the witness Spielman, who had been a clerk in the office of the late Senator Lundeen,: "Q. And you testified that is what Senator Lundeen was trying to do, is that correct?" The witness did not answer the question and it was not repeated (R. 133). This was another attempt of the Government prosecution to create a sinister atmosphere by trying to "smear" a dead United States Senator.

Having once secured the admission of the book *Spreading Germs of Hate*, into evidence, the prosecutor immediately began to capitalize thereon and in addition to the foregoing, commenced to read fragments from it—omitting a sentence here on page 10 (R. 124), then skipping a paragraph there (R. 124), jumping over to page 55 (R. 125), then back again to part of page 51 (R. 125), reading a paragraph and skipping others and then going back to page 61 and quoting the last paragraph (R. 125); returning to page 51 and reading the next to the last paragraph (R. 127); later going to page 104 and reading a few lines, interspersed with his comments (R. 127-129), then going to page 223 of the book and reading

another paragraph, apparently for the sole purpose of bringing before the jury the fact that Judge Daniel F. Cohalan, the father of petitioner's co-counsel, Daniel F. Cohalan, Jr., addressed German-American audiences prior to America's entrance into the first World War (R. 129-131).

Enough has been shown that this book concerning events more than a quarter of a Century before this indictment and published more than ten years before the same, was indeed the "text of the Government and the epitaph of this defendant!"

(2)

Linking the Petitioner with Non-Interventionist in Congress.

The petitioner had long been a professed and confessed non-interventionist. During almost the entire period that he was acting for his foreign principals, the United States was operating under the Neutrality Act of November 4, 1939, and during the entire period, and for months after the petitioner ceased to be an agent for any foreign principal, the United States Government maintained diplomatic relation with the German Reich. Moreover, during a large part of this period, the two principal political parties in the United States were waging a fight for the office of President of the United States. Both President Roosevelt, who was a candidate for election to a third term, and Wendell Wilkie, his opponent, pledged the American people that their sons and daughters would not be sent to fight on foreign shores!

"Birds of a feather flock together," it is said. Nothing could be more natural than that the petitioner would seek the advice and assistance of those who believed with him that the United States should not intervene in the Second World War on the side of either party thereto. There was a considerable number of these non-interventionists before Pearl Harbor and December 7, 1941, in Congress, but an attempt was made to link petitioner with only a few of them, including the late Senator Ernest Lundeen of Minn-

esota, Senator Holt, of West Virginia, Congressman Fish of New York and Congressman Stephen O. Day of Illinois, and to make out that they were engaged in something sinister and unpatriotic.

As to Congressman Fish, the testimony heretofore quoted indicates something of the relationship between him and the petitioner.[4] It needs only to be added that his clerk, one witness Hill, had denied before a grand jury that he knew petitioner and had been convicted of perjury. He was a star witness for the prosecution (R. 290-301). While it does not appear of record in this case, it is a fact that his sentence was very much reduced after the conviction of petitioner. It was before the trial of petitioner and when witness Hill was before the court for sentence that prosecutor Maloney, in opposition to clemency, made the above quoted statement that:

> "This man is still shielding Viereck, a sworn enemy of this country" (R. 231).

It was the same Congressman Fish that prosecutor Maloney attempted to heckle as above set forth.

The only connections between the petitioner and witness Hill are: (1) That petitioner consulted him with respect to mailing out reprints of an address made by Senator Lundeen on the floor of the Senate entitled "Six Men and War," for which he was paid by Senator Lundeen (R. 279-283), and (2) that petitioner obtained from him two mailing lists, for which petitioner paid him $100 each.

With respect to Senator Lundeen, another confirmed non-interventionist, in addition to acting as an intermediary with Hill in having mailed out copies of the reprints from

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[4]Except the prosecution offered through the witness Butler from its files of *Liberty* magazine, and the Court admitted over objections, a memorandum of November 26, 1937, from petitioner to the editor of that magazine, reporting the willingness of Congressman Fish to collaborate in writing an article on the necessity of a war referendum. (Tr. 1346-1349).

the Congressional Record of his speech, "Six Men and War," the petitioner assisted the Senator in preparing two or three speeches non-interventionist in character (R. 265). These were "Six Men and War," "Contributions of German-Americans to the United States," and "Lord Lothian against Lord Lothian," the latter being a contrast in parallel columns of inconsistent statements made by the distinguished British Lord[5].

Prosecutor Maloney in his summation to the jury referred to Congressman Fish as "that Fish of foul memory" (Tr. 1586) and "Last but not least we come to the Fish in question. That windy warrior who cowered in his tent while this poor, unfortunate clerk took the rap for shielding him. That great American who took refuge in invective when asked a direct question" (Tr. 1566).

Mr. Maloney also referred to the late Senator Lundeen as follows:

> "The name of Senator Lundeen has been brought into this case, as I told you it would. It is not a pleasant task, not a pleasant task to bring in the name of any man, living or dead. Facts are facts and the American people are entitled to know. A public office

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[5]In an apparent effort to smear Senator Lundeen and prejudice the jury, Prosecutor Hickey brought out in the testimony of Witness Spielman (R. 304-305, Tr. 883-885) that the Senator had a system of so-called "kickbacks" in his office. Also, from the witness Johnson, another employee in that office and which evidence was objected to by counsel for petitioner, (Tr. 946-947) but the objections were overruled.

Apparently a question arose in the income tax returns of Senator Lundeen and the former employees of his office made written statements with respect thereto which were filed with the Bureau of Internal Revenue, to the effect that the deductions were used for office expenses and not for the personal use of Senator Lundeen. Witness Norma Ward Lundeen, not having the original statements, was not permitted to testify with respect thereto (R. 305-308) nor was the Bureau of Internal Revenue required to produce the original written statements pursuant to subpoena (R. 308-310).

All of this was highly prejudicial to the petitioner.

is a public trust.' These are the words of President Roosevelt, 'A public office is a public trust.'

"Senator Lundeen? Possibly more fool than rogue. Certainly something of both. Certain it is that those girls kicked back part of their salary to him. He called it a reserve fund. That which is called a rose by any other name would certainly smell as sweet. Others have a shorter and an uglier term for the same practice. It has been called 'extortion'[6].

"What a tragic picture: a United States Senator chained as a vassal to the wheel of Goebbels propaganda chariot, and they call us to account for smearing him. We did not make the facts. We have disclosed them to the American people, as it is our duty to do (Tr. 1565-1566).

With respect to the then ex-Senator Rush Holt, another isolationist, the only connection the petitioner was shown to have had with him was to consider the publication of excerpts from his addresses, published in the Congressional Record, as a book. For some reason not clearly appearing, it was concluded not to publish the excerpts as a book and some of them were intercepted by the British censor in Bermuda in the mail from New York of July 1, 1941, to a European resident, identified as the German ambassador to Portugal (R. 207). In referring to Senator Holt, the Government prosecutor in his closing address to the jury stated:

"Senator Holt? Senator Holt, the American people want an explanation of his ready acceptance of this German propaganda as a collaborator of his book, and the American people are entitled to an explanation of why the German foreign office was so interested in his proposed manuscript (Tr. 1566).

Not even former members of Congress were spared. Hon. John J. O'Connor who had defended the Witness Hill in the perjury indictment was referred to as follows in the closing argument to the jury:

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[6]See footnote [5] of this brief.

> "John O'Connor? John O'Connor; bumptious, bungling John O'Connor, whose sole contribution to the cause of American justice was to suppress the truth when that poor, unfortunate Mr. Hill wanted to tell it. We are accused of smearing him. We are accused of smearing O'Connor, the henchman and counsel of that Fish of foul memory" (Tr. 1566).

This chief prosecuting attorney having attacked Judge Goldsborough by the affidavit of bias and prejudice thus attacked former and present members of the Senate and House of Representatives in a trial of petitioner for his liberty—an attack which had nothing whatever to do with the question whether the answer of "Author and Journalist" was a fairly responsive answer to the generic requirement in paragraphs 11 of the supplemental registration forms:

> "Give a comprehensive statement of nature of business of registrant."

(3)

Immaterial but prejudical evidence.

With the witness Webber on the stand for the prosecution, it was brought out that in the study of petitioner at 305 Riverside Drive, New York, New York, there were photographs of Hitler and Goebbels (R. 142-146). This witness could not remember seeing photographs of a large number of others on the walls of the study (R. 146).

Also, with the witness Butler on the stand, there was introduced in evidence by this prosecuting attorney a letter from petitioner and a reply from the editor of *Liberty* Magazine, with a memorandum, concerning an article which appeared in that magazine to the effect that the maid in Hitler's house was something more than a housekeeper (R 151-153).

All this had nothing whatever to do with whether the petitioner correctly answered paragraphs 11 of the supple-

mental registration statements and was calculated,—as was the charge that he was an enemy of his country—to prejudice the petitioner.

(4)

Petitioner and Flanders Hall.

As a part of petitioner's non-interventionist activities on his own behalf and without any compensation having been shown by the prosecution to have been obtained by him from any source, the petitioner became interested in a small publishing company in New Jersey, known as Flanders Hall, Inc. This company, which had no printing press of its own, had been organized to have printed and marketed a book written by one of its incorporators and which book was not a success.

Petitioner entered into a contract with this company whereby he agreed to make certain loans to the company, with an option—which was never exercised—to purchase 66 2/3 per centum of the capital stock and petitioner retained authority to approve all expenditures (R 249-251). During the time in question petitioner advanced a total of $22,500 to the company and was repaid a part thereof (R. 253-257) including a part of the sum named in the next paragraph.

This company published *One Hundred Families That Rule the Empire* which petitioner had agreed to publish in America for Wirsing and for which he had been advanced $10,000 for printing, advertising, etc. Also the company published a number of other booklets for the petitioner which are listed in a footnote on pages 8 to 10 of the respondent's brief in opposition to the petition for certiorari.

Practically, if not all, of these booklets were either non-interventionist in character or highly critical of England,

both as to social and economic conditions in England itself as well as its imperialistic practices in Egypt, India, South Africa, and elsewhere.[8]

It was not even claimed by the Government, much less proved, that there was anything in these booklets which was subversive or hostile to the United States Government and certainly we have not reached the position in this country that a citizen of the United States is to be punished for printing a booklet—or dozens of booklets—not subversive or hostile to the United States Government or that he may be punished for printing a booklet—or dozens of booklets—critical of some foreign power.

Whatever may be the views of the Court or counsel as to the correctness of such arguments, the fact remains that opinions, even in high quarters, are changing in respect to these matters, as shown by footnotes 7 and 8 hereto. In any event, the course of England in these matters was a legitimate subject of argument.

Further, with the exception of the booklet, *One Hundred Families That Rule the Empire*—for which the petitioner

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[7]Sir William Beveridge in submitting on November 20, 1942, a report of the Interdepartmental Committee on Social Insurance and Allied Services for post-war reconstruction in England proposed a plan for overcoming want in the British Isles, thereby, in effect, recognizing the poverty-stricken conditions of many English people which were the subject of criticisms.

[8]The Atlantic Charter, which was drawn up by President Roosevelt and Prime Minister Churchill, signed by them, and published in the Congressional Record for June 11, 1941, p. 5352, seemingly recognized the imperialistic policies of all governments practicing them which, of course, included the English government.

Wendell Willkie, in his address of October 26, 1942, to the Nation after his journey to the allied nations stated, among other things, (Congressional Record, A. 4156-4159) that:

> "In Africa, in the Middle East, throughout the Arab world, as well as in China and the whole Far East, freedom means the orderly but scheduled abolition of the colonial system. I can assure you that this is true. I can assure you that the rule of people by other people is not freedom, and not what we must fight to preserve."

was agent for its publication and for which agency a registration statement was filed—there was absolutely no showing or attempted showing that the petitioner received one dime from any foreign principal for the publication of these booklets. On the contrary, the evidence is undisputed that petitioner lost several thousand dollars of his loans to Flanders Hall, Inc., in this publishing venture. (Gov. Br. p. 18 opposing certiorari). However, there was absolutely no reason why petitioner could not have registered as the agent of a foreign principal or principals—if in fact he had been such—for the publication of these booklets just as he did register for the publication of *One Hundred Families That Rule the Empire.*

(5)

Mailing of reprints from the Congressional Record.

There were a great many reprints of addresses and articles from the Congressional Record which were mailed out by both the interventionist and the non-interventionist before Pearl Harbor and December 7, 1941. Whether we agree or disagree with the arguments of either side, they had a legal right to make such arguments in the United States in an effort to win as many adherents as they could.

The petitioner was not permitted to prove the number or character of the reprints which were mailed out by the interventionists. (R. 195). An offer of proof was made by petitioner and rejected that one million copies of a certain interventionist speech inserted in the Congressional Record were purchased and mailed out. (R. 196). Petitioner offered proof from the records of the Government Printing Office with respect to the purchase and mailing out of the reprints from the Congressional Record but this offer of proof was likewise rejected (R. 188-194).

The prosecution was permitted to show that a large number of non-interventionist reprints from the Congressional Record were purchased by the Witness Hill and mailed out, either by him or by one of the War Debts Committee (R.

288-301). The only direct evidence that petitioner was connected with mailing out of any of these reprints was the reprint of the address by Senator Lundeen entitled "Six Men and War", as to which, as heretofore stated, petitioner acted as an intermediary for Senator Lundeen in personally talking with Hill (R. 287, 282). The Senator and not petitioner paid Hill for mailing them out.

The Government in its brief in opposition to the petition for certiorari (pp. 11-13) attempts to make it appear that petitioner conceived and organized, with Senator Lundeen, Prescott Dennett and Linn Gale, the "Islands for War Debts Committee" and that since Dennett paid for many of these non-interventionist reprints and mailed them out, the petitioner is somehow responsible for so doing and that the same constituted a business "activity" on his part.

The evidence upon which the Government relies to establish that petitioner had anything to do with organizing this Committee consists of the testimony of the witness, Mrs. Webber, that petitioner "told us that he had organized the committee" (Tr. 546) and that "he said he organized the "Make Europe Pay War Debts Committee" (Tr. 547). Mrs. Webber's husband, who was present at the time, testified that petitioner "told us, rather, that Senator Lundeen, Linn Gale, and Prescott Dennett had formed the Committee, and to the best of my knowledge Mr. Viereck said that it was his idea" (Tr. 501-592). Mrs. Webber later contradicted both herself and her husband and stated that petitioner "told us, yes, he said it was their idea or words to that effect" (R. 288).

The two Webbers were clerks employed by the Committee. They did minor clerical work, such as addressing envelopes, etc., and it was not shown that they were in any position to know who organized the said Committee. No evidence was offered that petitioner personally directed any of its activities. The most that was proved was that he was occasionally in the Committee's office in conference with Dennett and that Dennett had called him on the telephone.

As will be noted, the testimony of husband and wife do not in all respects agree as to what petitioner is alleged to have told them. It is submitted that in addition to the apprent contradictions in their testimony, such testimony is not sufficient to establish that petitioner had any part in creating the War Debts Committee and much less that Dennett—in having material inserted in the Congressional Record, ordering reprints thereof, and mailing them out—was acting pursuant to the direction, or as the agent of petitioner.

But even if it were established that petitioner personally supervised and directed the obtaining of the reprints and mailing them out—and this has not been done—there is nothing whatever to show that in doing so he was acting as the agent of any foreign principal or that he obtained one dime therefor.

Such non-interventionist activities were certainly not the "business of registrant", within the terms of paragraph 11 of the supplemental registration statements which required him to give the nature of his business from which he earned his livelihood and not a detailed statement of activities constituting a temporary avocation.

Such non-interventionist activities of petitioner were no more his "business" or the "nature of his business" than were the activities of the interventionists their business. At most, these activities were merely temporary avocations, alike of both interventionists and non-interventionists, and not their business from which they earned their livelihoods. There was no requirement in paragraph 11 of the supplemental registration form that petitioner report his activities which were at best merely a side line and for himself.

The same may be said of the assistance given by petitioner to Senator Lundeen in the preparation of two or three addresses. The fact that petitioner may have obtained on his own initiative, or at the direction of Senator Lundeen, from the German Embassy certain data used in one or more of the addresses is of no importance in the absence of a showing that he was acting as the agent of a

foreign principal. The United States was then at peace with Germany; diplomatic relations were being maintained at the time between the two Governments; there was effective a Neutrality Act of Congress; and either a Senator or a private citizen was as free to obtain data from the German Embassy as he was to obtain same from the English Embassy. Truth is not subject to racial boundaries.

(6)

Stage Play of Counsel for the Government.

Counsel for petitioner requested the chief prosecuting attorney to furnish copies of the exhibits which he had introduced in evidence, consisting of reprints from the Congressional Record which had been mailed out by either Hill or the War Debts Committee.

The Government had placed Prescott Dennett on the witness stand but he had refused to answer practically all questions which were put to him by the court (Tr. 700-701). After this witness had been excused, Mr. Maloney requested that he be brought back for the purpose of having him identify some mail sacks "containing a lot of speeches." This stated purpose, but not the request, was made out of the hearing of the jury. The court refused the request (R. 161-162).

After Dennett had been excused, Hill had been placed back on the stand for further cross-examination. Several attendants, acting apparently under private instructions of Mr. Maloney, trooped into the court-room carrying numerous mail sacks (R. 162). Petitioner's counsel vigorously objected to the bringing of the mail sacks into the court room, but Mr. Maloney requested the court, in the presence of the jury, for permission to "make my offer of proof, through the witness, of these mail sacks." Mr. Maloney stated that the copies of the exhibits requested were in the mail sacks—but there was obviously no occasion to identify for the jury the mail sacks containing the reprints in order to deliver them to counsel for petitioner. The court ordered the sacks removed from the court-room (R. 162).

However, as a result of this stage play on the part of the chief prosecuting attorney, he got before the jury the several mail sacks, containing what appeared to be numerous reprints from the Congressional Record. This was obviously done for the purpose of creating the impression in the minds of the jury that petitioner was responsible for mailing out a vast number of reprints when the fact of the matter is that it was proven that he had connection with mailing out only one reprint of a speech and that connection was merely as an intermediary for Senator Lundeen.

(7)

Attempt of Prosecuting Attorney to Create Sinister Aspects.

In addition to the above related attempts to "smear" certain non-interventionist members of the Congress and to create the appearance of sinisterism by the friendship between them and petitioner, there was produced by the prosecution a clerk by the name of Gardner who was employed by the British censor in Bermuda. She testified that she had intercepted in the trans-Atlantic mails from the United States a large manila envelope which had been mailed in New York City on July 1, 1941, to a certain name in Lisbon, Portugal, identified by her as an alias for the German ambassador to Portugal. Inside the large envelope was a smaller one addressed to Dr. Hans Dieckhoff, Berlin, Germany, and inside of this smaller envelope were, of all things! clippings from the Congressional Record of speeches made by Senator Rush Holt of West Virginia (R. 206-210). There was no showing on or in the envelopes as to who had mailed them.

As indicated by the record, petitioner's counsel, upon objection of the chief prosecuting attorney, was denied the right to fully cross-examine this witness. A motion to strike her testimony was denied (R. 209).

Then the chief prosecuting attorney placed on the witness stand as his succeeding and last witness, a representative

of the Bureau of Investigation and qualified him as an expert on typewriting machines. Equipped with large charts, he proceeded in the presence of the jury to show why he thought that the typewriter used to address these envelopes was the same as the one which had been used to type a letter which petitioner had signed (Tr. 1087-1105).

This was all of the evidence that petitioner had anything to do with mailing the envelope in July, 1941, to Portugal, for transmission to Germany, but even if it were established that he did mail, or cause it to be mailed, the Neutrality Act was in effect; the United States was at peace with Germany; and there was no legal reason why a neutral could not communicate with persons in Germany. The envelopes, as stated, contained nothing more sinister than clippings from the Congressional Record!

(8)

Petitioner denied right to show proof of his loyalty to the United States.

As hereinbefore shown, petitioner had been publicly charged on February 6, 1942, by the chief prosecuting attorney, in the presence of press representatives and before Letts, J., with being a "sworn enemy of the United States" (R. 230-231) and the charges had been carried in the press, (R. 223) less than ten days before petitioner's trial commenced; the jury had heard this same prosecuting attorney viciously refer to petitioner as "using the Congressional Record and the franking privilege to divide us and literally to beat our brains out with his own clever propaganda" (R. 159, Tr. 202); as "our little proponent of better relations" (R. 199, Tr. 199); as operating propaganda "to divide us according to the plan of his Teutonic overlords in Berlin" (Tr. 201)—all without any evidence then or afterwards presented to the jury to establish any, much less a reasonable, basis for such statements.

However, counsel for petitioner determined to produce as a witness the United States Ambassador to Italy, who

had been Undersecretary of State, for the purpose of showing the loyalty of petitioner to his Government. Mr. William Phillips was produced and sworn, but upon objection of the chief prosecuting attorney, Mr. Phillips was not permitted to testify concerning the matter. The petitioner offered to prove:

> "* * * through the testimony of Ambassador Phillips that back in the year 1933, Mr. Viereck, upon his return from Europe, contacted the White House and stated that in his travels abroad he had procured some knowledge or information which he thought would be of importance or value to the United States Government, and that he wished to be able to transmit or impart same to the proper Government officials.
>
> "We further offer to prove that pursuant to such request on Mr. Viereck's part, he was referred by the House to the State Department, and there met and conferred with Mr. Phillips, who was acting Secretary of State at that time; that he had a conversation with Mr. Phillips; that he was thereafter referred by Mr. Phillips for further conversations to some office aids in the State Department, and that these conversations continued.
>
> "We offer this proof to show that in 1933 this man, who is here standing trial charged, among other things, with propaganda was, number 1, accepted by the American government as a person capable of imparting to them information about matters and information of importance, and, number 2, was so interested in the American Government that he was willing and anxious to impart such information.
>
> "This proof goes to show past conduct on the part of this defendant, and is offered on the question of intent in this indictment. (Tr. 1272)."

The tender of proof concerning these conferences was rejected by the trial court (R. 1274).

(9)

Proof concerning wilful omission to fully reply to Paragraph 11 of the registration forms.

No proof was offered by the prosecution showing or reasonably tending to show that petitioner had wilfully omitted to report the nature of his business or even that he wilfully omitted to report his activities as charged in the indictment. No proof was offered that petitioner engaged in any of these non-interventionist activities as the agent for any foreign principal or that petitioner received a dime from any foreign principal for engaging therein.

Apparently the prosecution relied upon the inferences that while petitioner was a registered agent for two, and for a part of the time for three foreign principals to perform specific duties for each, described in the contracts of employment filed with the State Department, and during some part of the time was engaged in non-interventionist activities, the contracts were a subterfuge. We submit that a man may not be convicted and heavy penalties meted out to him on any such basis.

Also, something was attempted by the prosecution to be made of the fact that petitioner was paid by his principals an aggregate sum of "more than $65,000" during the period of approximately 18 months that he was so employed (Gov. Br. in opposition to certiorari, p. 6-7). However, $10,000 of this sum was advanced under the Wirsing contract to pay the cost of publishing, advertising, and selling *One Hundred Families That Rule the Empire* and from the balance of some $55,000 the petitioner had to pay certain expenses, including assistants (R. 22, 43, 46, 51, 53). And taxes, the amount of such expenses does not clearly appear in the record.

Moreover, such earnings were not so much out of line with the earnings which it is reasonable to suppose that petitioner made as the author of some "best seller" books and as a contributor to such magazines as *Liberty* and *Saturday Evening Post*, in the latter of which his book *Spreading Germs of Hate* was first published serially. The

work for his foreign principals and his literary work could not be carried on at the same time, as petitioner pointed out in his letter to the German Library of Information (R. 48). Too, it is reasonable to assume that the continued absence of his name as author of magazine articles and books would considerably reduce the demand therefor and thus interfere with his sales of such books and articles.

No reasonable inference can be drawn from the amount of compensation received by the petitioner under his contracts of employment that a part of it was for carrying on his non-interventionist activities.

The fact that an envelope, containing clippings from the Congressional Record, was snared by the British censor in Bermuda on its way from New York City to Berlin via Portugal and the further fact that petitioner may have communicated with the German Embassy at the request, or instigation, of the late Senator Lundeen in an effort to obtain data for a speech or two by the latter, are not sufficient to establish that the petitioner was thus acting for any foreign principal, and/or receiving compensation therefor.

But petitioner was not willing to have his alleged wilful omission rest on the failure of the prosecution to establish, or attempt to establish the wilfullness of the charged omissions from the supplemental registration statements.

The petitioner tendered proof—which was rejected upon objections of the chief prosecuting attorney—that out of approximately 560-odd registration statements filed with the State Department by different agents of foreign principals, "over 500 of those registrants filed in the same form and in the same manner that this defendant did" (R. 179-187). In addition, the petitioner subpoenaed five registrants, "selected at random, who filed registration statements" and tendered their testimony as to what they understood Paragraph 11 of the registration form to require of them and how they answered it, but that tender of evidence was rejected (R. 188). Petitioner attempted to develop by the witness Price, who drew this registration form,

where he obtained the language for this paragraph 11 but the Court sustained objections to such testimony (Tr. 1382-1386).

Further, the record shows quite clearly that the petitioner was most anxious, even to the point of making himself somewhat of a nuisance, to comply with the law requiring registration of foreign agents. By letter of September 11, 1939 he notified the State Department of his contract with the Munich newspaper (R. 78); by letter of September 20, 1939, that department referred to a conference which petitioner had had in said department as early as March 13, 1939, or long before the contract was entered into, with respect to writing for foreign newspapers, and advised him to register on the forms enclosed for that purpose (R. 79-80); the form was executed on September 23, 1939, and receipt acknowledged in State Department letter of September 30, 1939 with request for an English translation of the contract, the copy filed being in the German language (R. 80-81); and this copy was furnished with petitioner's letter of October 2, 1939, receipt of which was acknowledged in State Department letter of October 9, 1939 (R. 82).

The State Department letter of September 30, 1939, referred to an inquiry by petitioner concerning the requirement for registration in event he became an employee of the German Library of Information and he was requested to furnish a copy of that contract in event it was consummated so that the said department could consider whether he would have to register therefor (R. 81). A copy of the contract was furnished with petitioner's letter of October 7, 1939 (R. 83-84) and petitioner was advised in a reply of October 12, 1939 that he would have to register as agent for the German Library of Information and that the copy of contract had been filed with the previous registration for the Munich newspaper (R. 84).

Apparently not content with all this—and showing his anxiety to comply with the law—petitioner wrote the State Department a further letter of October 13, 1939, inquiring whether there is "anything else I must do in the matter?

Must I report automatically every six months on the contracts in question, or will I have a reminder" (R. 85-86). Reply was made October 20, 1939 (R. 86). Six months thereafter, or April 19, 1940, petitioner executed before Notary Public Emil Morosini, Jr., who was his chief trial counsel in this case, the first of the supplemental registration statements and it was filed April 23, 1940 (R. 26-30). On October 24, 1940, petitioner executed before the same notary public his second supplemental registration statement and it was transmitted to the State Department with a letter from Cohalan & Morosini, Esquires, signed by Daniel F. Cohalan, Jr., who was petitioner's associate trial counsel (R. 30-35).

The second original registration statement, which was the agency for the publication of the Wirsing book was likewise executed before Mr. Morosini as notary public, was transmitted by his letter of April 24, 1941, to the State Department (R. 37-43) and was acknowledged in State Department letter of May 3, 1941 (R. 87-88).

It thus appears to be clear that one of the original, and at least two of the supplemental registration statements were executed and filed with advice of counsel—two of the three supplemental registration statements as to which violations were charged in two of the remaining three counts of the indictment.

It is difficult to understand from the record evidence what more petitioner could have done to show his concern in complying with the Registration Law and while it was not required to do so, at no time did the State Department suggest to petitioner or to his counsel that his registration forms were not in accordance with the said department's understanding of the requirements.[9]

In addition, and last but not least, the trial court excluded

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[9]Petitioner knew early in January and March 1941 that the Federal Bureau of Investigation was inquiring into his affairs (Tr. 442-445, 456-458). There was ample opportunity for him and his counsel to have changed his answers to paragraphs 11 of the supplemental registration statements subsequently filed had either believed that the answer theretofore given was not fully responsive.

petitioner's chief trial attorney from the case because he stated to the court, in the presence of the jury, as follows:

> "Now, if the court please, I think your honor has foreclosed us from a very important line of inquiry into this case. I think, in view of your Honor's rulings throughout the Government's testimony and throughout the defendant's testimony, I charge that your Honor is biased in favor of the Government and prejudiced against the defendant.
>
> "I say that this defendant has no alternative but to rest his case." (R. 118).

It was then about time for the noon recess and at the conclusion thereof, the court stated that it was his opinion that the remarks of petitioner's chief trial attorney "in submitting his case and resting were delivered for the purpose of encouraging this jury to believe that there is no use in proceeding further with the defense because the court wouldn't permit a defense to be put in, and if the court is correct in that, then the effort on the part of Mr. Morosini was to obstruct justice" (R. 120).

The prayers for instructions to the jury and objections to the Government's prayers as well as the closing argument to the jury on behalf of petitioner, had to be improvised by the associate trial counsel with such assistance as advisory, and present appellate counsel for petitioner could give.

Statutes Involved.

The Statutes involved are the Act of June 8, 1938, as amended by the Act of August 7, 1939 (22 U. S. C. 601-606) and the superseding New Registration Act of April 29, 1942. These statutes are printed in full in the appendix to petitioner's brief in support of the petition for a writ of certiorari (pp. 63-82).

SPECIFICATIONS OF ERRORS TO BE URGED.

1. Section 5 of the Act of June 8, 1938 (22 Stat. 615) (22 U. S. C. 615 is indefinite, uncertain, and fixes no definite standard of conduct, the violation of which constitutes a crime in the filing of supplemental registration statements, thereby infringing the petitioner's

rights under the Fifth and Sixth Articles of the Bill of Rights to the Constitution of the United States.

2. The indictment shows on its face that the alleged crime of omitting to state in answer to Paragraph 11 of the supplemental registration forms prescribed by the Secretary of State "as a part of his business and activities" the activities charged in Counts II, III and V of the indictment is not a failure to "Give a comprehensive statement of nature of business of registrant" as required by said paragraphs, constituting a wilful omission to state in supplemental registration statements material facts required to be stated in compliance with Section 3 of the Act of June 8, 1938, c. 327 (52 Stat. 631) as amended by Section 2 of the Act of August 7, 1939, c. 521 (53 Stat. 1244) (22 U. S. C. 611-616) or by the regulations issued by the Secretary of State.

3. The petitioner having answered Paragraphs 11 of the three supplemental registration forms requiring: "Give a comprehensive statement of nature of business of registrant" with the words "Author and Journalist" fairly and fully complied therewith.

4. The Paragraphs 11 of the three supplemental registration forms prescribed by the Secretary of State for use by all registrants requiring "Give a comprehensive statement of nature of business of registrant" were not in accordance with Section 3 of the Act of June 8, 1938, as amended by Section 2 of the Act of August 7, 1939, and therefore were void.

5: The court below erred in not reversing the trial court for:

(a) Admitting in evidence, over objections of petitioner, the book, *Spreading Germs of Hate* and in permitting the use thereafter made of it before the jury by the prosecuting attorney also over objections of the petitioner.

(b) Granting as instructions to the jury the prosecution's prayers Nos. 2A, 2 and 8 and in not granting petitioner's prayer No. 19, the latter sharply raising the issue that petitioner could not be convicted under the indictment unless the jury found that the activities, or some of them, charged in Counts II, III and V of the indictment were ones in which he engaged "as agent of a foreign principal during" the preceding six months' period

and that such omitted facts were material ones required to be reported by Section 3 of the Act of June 8, 1938, and the supplemental registration forms.

(c) Referring to, and quoting from a House of Representatives Committee report in his general charge to the jury with respect to the requirements placed by law on registrants of foreign principals in filing supplemental registration statements.

(d) Permitting in the presence of the jury the misconduct of the prosecuting attorney and in not instructing the jury to disregard such misconduct, particularly the inflammatory closing argument of such attorney for the Government.

6. There was no wilful intent shown to violate the law requiring registration of agents of foreign principals.

7. The court below erred in not reversing the sentence imposed by the trial court which added a further penalty of the costs of the trial to the penalties fixed in Section 5 of the Act of June 8, 1938, of a fine and/or imprisonment in the discretion of the court.

SUMMARY OF ARGUMENT.

The petitioner urges that the penalty Section 5 of the Act of June 8, 1938, which was later superseded by Section 8 of the New Registration Act of April 29, 1942, is unconstitutional because of its indefiniteness and uncertainty in fixing a reasonable standard of conduct to be followed by registrants filing supplemental registration statements, the wilful violation of which constituted a crime. No such standard was fixed elsewhere in the Act of June 8, 1938, nor in the amending Act of August 7, 1939. If any proof of this uncertainty is required in addition to the language of the statute, it is found in the labored opinion of the United States Court of Appeals which undertook to rewrite the statute in order to uphold the conviction of the petitioner. Further proof is found in the rulings of the trial court in the admission of evidence on behalf of the prosecution and in the denial to petitioner of the right to introduce evidence to controvert the position taken by the prosecution.

It is also found in the wide difference of opinion between counsel for the Government and counsel for the petitioner as to what the statute actually means.

Petitioner claims that such indefiniteness and uncertainty and failure to fix any standards for supplemental registration statements were recognized by the Congress in the passage of the New Registration Act of April 29, 1942, wherein these defects were corrected.

The petitioner claims that he was indicted for one crime and tried for another, neither of which was within the terms of the 1938 Act as amended by the 1939 Act. The indictment being for an alleged wilful, unlawful, felonious, and knowingly omission to state certain detailed activities charged in the indictment and which activities were not required to be stated in the said Acts, nor in Paragraphs 11 of the supplemental registration forms, nor in the regulations issued by the Secretary of State. The trial was on the basis that petitioner was a propagandist, serving his "Teutonic overloads in Berlin" and striving to divide us and literally beat our brains out.

The petitioner could do no more than answer the said Paragraphs 11 of the supplemental registration forms in accordance with the usually accepted meaning of the words used by the Secretary of State therein and he did correctly answer the same. The activities of petitioner were not called for in said Paragraph 11 of said forms and the non-interventionist activities of petitioner were engaged in for himself, not for any foreign principal, and not for hire. Had it been the intention of the 1938 and 1939 law to require petitioner to report his activities, whether on his own behalf or for a foreign principal, such Acts would have so specified, as does the New Registration Act of 1942.

The errors of the trial court in the admission of evidence, instructions to the jury, and the misconduct of the chief prosecuting attorney were many and an attempt has been made in the Statement of the Case to summarize them. At the very least, these errors alone are undoubtedly such as to entitle the petitioner to a reversal and a new trial.

ARGUMENT.

I.

Section 5 of the Act of June 8, 1938 (52 Stat. 615) (22 U. S. C. 615), the Penal Provision of the Law, is Indefinite, Uncertain, and Fixes no Definite Standard of Conduct, the Violation of Which Constitutes a Crime in the Filing of Supplemental Registration Statements, and the Petitioner's Conviction and Sentence Thereunder Infringes His Rights Under the Fifth and Sixth Articles in the Bill of Rights of the Constitution of the United States.

Section 5 of the Act of June 8, 1938 (22 U. S. C. 615), is as follows:

> "Any person who wilfully fails to file any statement required to be filed under this Act, *or in complying with the provisions of this Act, makes a false statement of a material fact, or wilfully omits to state any material fact required to be stated therein shall,* on conviction thereof, be punished by a fine of not more than $1,000 or imprisonment for not more than two years, or both." (Italics supplied.)

As petitioner filed both the required original and supplemental registration statements and as he is not charged with making any false statements therein, the only material part of this section is a part of the italicized language, to wit: "in complying with the provisions of this Act . . . wilfully omits to state any material fact required to be stated therein." What is a material fact required to be stated in complying with the provisions of the Act is certainly not stated or defined in this section!

Since the demurrer was sustained as to Counts I and IV of the indictment pertaining to the two orignal registration statements for the three foreign principals and petitioner was tried and convicted under Counts II, III and V pertaining to the three supplemental registration statements, we

must turn to Section 2 of the 1939 Act amending Section 3 of the 1938 Act requiring the filing of supplemental registration statements, in pertinent part, as follows:

> " 'Sec. 3. Every person who has filed a registration statement required by Section 2 shall, within thirty days after the expiration of each period of six months succeeding the first filing, file with the Secretary a statement, under oath, on a form prescribed by the Secretary, which shall set forth with respect to such preceding six months' period—
>
> " '(a) Such facts as may be necessary to make the information required under Section 2 hereof accurate and current with respect to such period;
>
> " '(b) The amount and form of compensation received by such person for acting as agent for a foreign principal which has been received during such six months' period either directly or indirectly from any foreign principal; and
>
> " '(c) A statement containing such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period."

This is the only section of the statute which provides for the filing of supplemental registration statements and which provides for the contents thereof. It is well to note that Section 2 of the 1938 Act was not amended by the 1939 Act. This unamended Section 2 of the 1938 Act specifically provides as to the contents of the original registration statements and by reason of the demurrer being sustained as to the Counts I and IV, pertaining to such original registration statements, they are not before this Court and peitioner is not now answerable as to them. It must thus be taken for the purpose of this case that the orignal registration statements fully complied with the specific directions of the Congress in the said unamended Section 2 of the Act.

As hereinbefore stated, the suplemental registration statements were identical in their requirements contained in 19 separate paragraphs or questions, exeept as to para-

graph 15 thereof which differed slightly as between the original and supplemental registration forms, pertaining to the matter of compensation received by the registrant. This difference is due to the difference between the requirements in the unamended Section 2 (e) of the 1938 Act which required the registrant in his original registration statement to state:

> "The compensation to be paid, if any, and the form and time of payment under such contract"

while the amended Section 3 (b) of the 1938 Act stated the requirements above quoted for the supplemental registration statements.

This slight difference may be laid aside as immaterial for present purposes. It seems to be agreed that petitioner met all of the requirements of all of the 19 paragraphs of each of the three supplemental registration forms except Paragraph 11, which he was charged in Counts II, III and V of the indictment as violating. Also, as hereinbefore quoted, this Paragraph 19 of the supplemental registration forms was identical with the same numbered paragraph in the original registration form in containing the requirement that the supplemental registrant:

> "Give a comprehensive statement of nature of business of registrant."

The answer to that requirement was "Author and Journalist."

Most certainly the above quoted Amended Section 3 of the 1938 Act is as silent as the above quoted Section 5 of the Act as to what shall constitute a "material" fact, the omission of which in the supplemental registration statement shall constitute a crime punishable with a heavy fine and imprisonment—meted out to the petitioner upon his conviction—for wilfully omitting to state them in filing his supplemental registration statements.

We repeat that petitioner was not charged nor convicted of omitting to state his answers to the specific requirements

set forth in the other 18 paragraphs of the supplemental registration form—and these were the requirements which had been prescribed in the unamended Section 2 of the Act. The supplemental registrant was required in the Amended Section 3 to furnish current information as to the preceding six months' period plus the other specific requirement stated in the amended Section 3 (b) of the 1938 Act for which paragraph 15 in the suplementad registration statement was formed.

The only possible basis for paragraph 11 in the supplemental registration forms is the above quoted amended Section 3 (e) of the 1938 Act and this was conceded by the court below—which tried to make it fit the alleged crime by judicially rewriting it. However, the Government, apparently not persuaded that the Court could do this, is now attempting to argue that a basis for such paragraph may be found in the general purpose of the 1938 Act as amended (Gov. Br. p. 21).

But that amended Section 3 (c) is specific in its terms and is controlling under familiar rules of statutory interpretation over any general terms of the statute (Post, R. 59). Also, unlike the amended Section 3 (b), pertaining to the supplemental registration forms, and unlike the unamended Section 2 (a) to (g) inclusive, pertaining to the contents of the original registration forms, Section 3 (c) makes no specific requirement of the supplemental registrant. It is not even a requirement sub-section of the statute. It is merely an authorization sub-section. It authorizes the Secretary of State, in his discretion, to fix a requirement in the supplemental registration form that there may be reported the activities of a registrant as agent of a foreign principal

concerning the details which he was required under this Act to report.[9]

This Section 3 (c) did not fix the material facts to be reported. It left to the discretion of the Secretary of State to require the reporting of the activities in connection with the details required under the Act of persons as agents of foreign principals. The authorization did not extend to fixing any activities which the registrant should report, but specifically limited that authorization to asking for the activities of the details which the Act itself required to be reported by the registrants as agents of foreign principals.

This Section 3 (c) is indefinite and uncertain because it left the matter to the Secretary and it was made more so

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[9]Of course, it can not be conceded that the appellant is guilty simply because he may not have complied with paragraph 11 of the registration form as charged in the indictment. The Original Act as amended did not specifically provide that a registrant would incur the penalties of Section 5 thereof for violation of any form or regulations issued by the Secretary of State as charged in the indictment. Aside from the fact that the regulations and forms are void to the extent that they exceed the terms of the statute (See *United States* v. *Symonds*, 120 U. S. 49; *United States* v. *Garlinger*, 169 U. S. 316), a person may not be punished criminally for violation of a regulation or form unless a statute specifically so provides. *United States* v. *George*, 228 U. S. 14; *United States* v. *Eaton*, 144 U. S. 677; *United States* v. *United Verde Copper Company*, 196 U. S. 207; *United States* v. *Standard Brewery*, 251 U. S. 210; *United States* v. *11,150 lbs. of Butter*, 195 Fed. 657; *Keane* v. *United States*, 272 Fed. 577; *United States* v. *Birdsall*, 206 Fed. 818; *United States* v. *Sandefuhr*, 145 Fed. 49; *United States* v. *Dodson*, 268 Fed. 397; *United States* v. *Ballard*, 12 Fed. Supp. 321. The rule in criminal cases is summarized in the latter case as follows:

> "The crime must be created by the Act of Congress, alone, for the public are not required to look beyond the act in their endeavor to ascertain what is criminal and the discretion of fixing what facts import criminality is is exclusively that of the law-maker as distinguished from the executive. The effect of departmental regulations, not ratified by act of Congress, is confided to civil matters and cannot be made the predicate of criminal offenses." (Citations.)

when the Secretary did not even attempt to ask for details of activities of the supplemental registrant concerning the details required to be reported under the Act—either for himself or for his foreign principal or for both—but instead the said Secretary fixed that such supplemental registrants should:

> "Give a comprehensive statement of nature of business of registrant."

The important word in this Paragraph 11 is "business." The word has been defined in the quotation elsewhere in this brief from an authority on the English language (Ante, Op. 7-8) to mean, in substance, that which requires the time and thought of a person and at which he earns his livelihood.

The identical paragraphs 11 in the original registration forms undoubtedly have the same meaning as they have in the supplemental registration forms and vice versa. The same answer was given in each instance by the petitioner; "Author and Journalist" and the contracts of employment of petitioner by the two foreign principals, for which these three supplemental registration statements were filed, showed by their terms that such was the work or *business* which petitioner performed for them.

The Secretary of State had no authority to issue forms except as that authority is found in this Act as amended and that authority, however general it may have been, as to other parts of the Act, was limited by Section 3 (c) to fixing for this requirement only what the said Section authorized and nothing more. He did comply with Section 3 (b). He did not comply with the said Section 3 (c). Nowhere in Section 3 (c) is he authorized to ask for the nature of the business of the registrant, whether for the registrant himself or for his foreign principal or both. The whole of the English language was available to the Congress had it intended to grant such authority to the Secretary or to state such requirement itself—and if the authority had been granted to this Secretary to do so, the

whole of the English language was available to him for that purpose. The Congress has used such language in Section 2 of the New Act of April 29, 1942.

In an effort to make subsection 3 (c) of the Act and Paragraph 11 of the supplemental registration form require that the registrant must report all of his activities whether or not performed as agent for his foreign principals, the court below also relied in its opinion upon paragraph 12 of Chapter IV of the regulations issued by the Secretary of State, which provides;

> "Agents of foreign principals who engage, whether or not on behalf of their foreign principal, in activities not included among the exceptions set forth in the Act and regulations shall be considered subject to the requirement of registration" (Pet. Br. 92).

This regulation does not require, or even advise an agent of a foreign principal that as such agent he must report any or all of his activities whether or not performed "as agent for a foreign principal," using the language of Section 3 (c) of the Act. The regulation simply and clearly provides that if a person is such an agent, and performing such activities for a foreign principal as are not excepted under the proviso to Section I of the Act and the regulations, that agent must register. The petitioner did register. What he must state in answer to Paragraph 11 of the Supplemental form; what "material facts" he must report in answer to that paragraph 11, are simply not stated in this paragraph of the regulation, nor elsewhere in either the regulations or the Amended Section 3 of the Act.

Moreover, the supplemental registrant was required to use a form prescribed by the Secretary in submitting his registration and specifically in Section 3 (c) of the Act he had to answer what the Secretary had fixed in the supplemental registration form. He could not safely disregard the paragraphs of the said form and follow the regulations nor could he safely disregard the form even though he might think it did not track the statute.

If the said Section 3 (c) be as uncertain as the court below seemed to think, it can not be judicially rewritten, as the court did do, as shown by the following comparison:

SUBSECTION 3 (c)	COURT'S REWRITE
"A statement concerning such detail, required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal for such six months' period."	"We interpret the provision as follows: a statement of the activities of such person (an agent of a foreign principal) during such six months' period" (R 324).

A criminal statute must be applied as it is found. It cannot be rewritten under the guise of "interpretation" as the court below has done. *United States* v. *George*, 228 U. S. 14, 22; *Bathgate et al* v. *United States* 220 U. S. 220, 225; *Falsulo* v. *United States*, 272 U. S. 620; *United States* v. *Chase*, 135 U. S. 255. See also Edward Livingston's statement (Works, Chase's ed. 1873, vol. 1, pp. 12,170) in reference to the English doctrine of constructive crimes and the entrapment of innocent persons by vague penal laws through the medium of judicial interpretation that:

> "This dreadful list (of offenses) was increased by the legislation of the judge, who declared acts which were not criminal under the letter of the law, to be punished by virtue of its spirit. The statute gave the text, and the tribunal wrote the commentary in letters of blood; and extended its penalties by the creation of constructive offenses * * * What the law forbids, is an offense; but the law cannot forbid without being perfectly intelligible * * * An ambiguous penal law is no law, and judicial decisions cannot explain it without usurping authority that does not belong to them."

Government counsel do not appear to be greatly concerned with this age-old principle of Anglo-American law. In their brief in opposition to the application for a writ of certiorari, they argue, (pp. 17-26) that it is unnecessary to rely upon Section 3 (c) as the basis for affording authority

to the Secretary to require the disclosure of all political activity of the foreign paid propagandist, as that authority could be drawn from the general purposes of the statute as a whole. In making such argument the Government ignores the elemental rule of statutory interpretation that the specific terms of a statute control over any general language or general purpose thereof. Also, the obvious fact that such an argument is incorrect is established by the further fact that in the New Act of April 29, 1942, Congress specifically provided for such full disclosure by an agent of a foreign principal of all his activities, whether or not for his foreign principal, thus doing by statute what the Government has thus far succeeded in persuading the courts below to do by interpretation. They now seek to persuade this court to sustain that interpretation—even in the face of the fact that Congress has entirely rewritten, rearranged and expanded the statute to make it accomplish what the Government seeks by interpretation to make the prior law do.

If Section 3 (c) has to be judicially rewritten as the court below did attempt to do in order to sustain the conviction and sentence of the petitioner and if Government counsel in this Court must fall back on what they contend are the general purposes of the Act as amended—and which we as strongly contend were not its *expressed* general purposes—the statute as so interpreted is most clearly in violation of the Fifth and Sixth Articles to the Bill of Rights to the Constitution—the maintenance of which inviolate is of far more importance to the people than that petitioner should go to the penitentiary and pay a heavy fine.

United Staes v. *Cohen Grocery Company*, 255 U.S. 81.
Lanzetta v. *New Jersey*, 306 U.S. 451.
Gorin v. *United States*, 312 U.S. 19.
United States v. *Wurzbach*, 280 U.S. 396.
Church of Holy Trinity v. *United States*, 143 U. S. 226.
Livingston's Works, above cited.

There is no question here of a statute "receiving administrative or judicial refinement before it is applied," as suggested by the Government (Br. P. 26). The much referred to Article 12 of the Regulations shows on its face, as above stated, that it does not attempt to advise a registrant what he must include in a supplemental registration form. It merely advises him that he must register if he is the agent of a foreign principal and engages in non-excepted activities. The language is so plain that petitioner does not understand why it is so strenuously insisted that it requires him to register and report his activities, whether or not for his foreign principal. When he registers he must use the form which the Secretary has prescribed and answer the Paragraphs thereof as they are found—not as the registrant may think they should be. There was no judicial refinement because both of the courts below read into Section 3 something that is not there.

The fact that the 1938 Act as amended would not work satisfactorily under such interpretation as petitioner insists should be given to it, is of no concern to a court called upon to determine the constitutional and legal rights of a citizen. Congress makes the laws in this country as this Court pointed out in *United States* v. *Wiltberger*, 5 Wheat. 76, 95:

> "The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislative, not the court, which is to define a crime and ordain its punishment."

Also, in *Harrison* v. *Vose*, 9 Howard, 372, 378 that:

> "In the construction of a penal statute, it is settled, also, that all reasonable doubts concerning its meaning ought to operate in favor of respondent."

Moreover, the final and conclusive answer is that Congress itself realized the defects in the 1938 Act as amended in 1939 and after experience with its operation, the Congress enacted an entirely new and different 1942 Act to more fully and comprehensively cover the activities of agents for foreign principals.

Bearing in mind the extreme concern of this petitioner to fully comply with the Registration Act of 1938 as amended —a concern which is set forth at some length in the Statement of the Case (pp. 32-33) is it possible to believe that this petitioner would not have reported all of his activities for himself if the 1942 Act has been law or if he had known that that was what Paragraph 11 of the supplemental registration forms intended, as now so vigorously urged by the Government?

There was certainly no reason why he should not have reported his activities as a non-interventionist on his own behalf. They were far from secret. He went and came as he saw fit. While it is not shown by this record, except indirectly, it is a fact that newspapers and a radio commentator were frequently referring to this petitioner's activities as a non-interventionist, working with various others in an attempt to keep this Nation neutral as provided in the Neutrality Act of 1939.

Upon this point, petitioner insists that the applicable parts of the 1938 Act as amended, for the filing of supplemental registration statements and punishemnt for any wilful failure to report all material facts required by the Act to be reported, are void as being in conflict with the Fifth and Sixth Articles of the Bill of Rights. Petitioner further insists that the uncertain, and indefinite terms of the said Act as amended and its failure to prescribe any definite standards of conduct, the violation of which constituted a crime were recognized and corrected by the Congress in the Act of 1942, thus showing that the Congress itself recognized that the prior acts were defective to that extent.

II.

The Indictment Shows on Its Face That Petitioner's Alleged Crime of Omitting to State in Answer to Paragraphs 11 of the Supplemental Registration Forms Prescribed by the Secretary of State "As a Part of His Business and Activities" the Activities Charged in Counts II, III and V of the Indictment is Not a Failure to "Give a Comprehensive Statement of the Nature of Business of Registrant" as Required by Said Paragraphs 11 and Does Not Constitute a Wilful Omission to State Material Facts in the Supplemental Registration Forms in Compliance with Section 3 of the Act of June 8, 1938 as Amended by the Act of August 7, 1939 (22 U. S. C. 611-616) or With the Regulations Issued by the Secretary of State. The Petitioner fairly and Fully Complied Therewith When He Answered "Author and Journalist."

The Petitioner Was Indicted for One Alleged Crime and Tried for Another, Neither of Which was Within the Terms of the 1938 Act as Amended by the 1939 Act.

(a).

Tried and convicted as a foreign propagandist

During the entire period covered by these three remaining counts of the indictment on which petitioner was tried for wilfully omitting to state "as part of his business and activities" certain activities named in the indictment—and to only a part of which the evidence was directed—which were wholly activities having for their purpose the keeping the United States a neutral in the war then and now raging in Europe, Asia and Africa—there was in effect the Neutrality Act of 1939 having a similar purpose.

During a considerable part of this period, extending from the nominating conventions in the early summer of 1940 until after the election in November 1940, each of the candidates of the two principal political parties were likewise expressing their neutral position as between the warring Governments.

The petitioner, as a professed and confessed non-interventionist, was merely cooperating with other non-interventionists in opposing the efforts of interventionists to bring about repeal of the Neutrality Act of 1939 and involve the United Staes in the war on the side of one group of the belligerents.

The hereinbefore cited statements and arguments of the chief prosecuting attorney—collected in the record but more fully shown by the transcript of the proceedings of the trial—demonstrate that he, at least, considered any of the non-interventionists—particularly the late Senator Lundeen, Senator Holt, Congressmen Fish and Day, and the petitioner—as enemies of their country.[10] No other possible interpretation can be placed on his characterization of petitioner as "a sworn enemy of this country," as serving his "Teutonic overlords in Berlin;" as endeavoring to divide us and literally beat our brains out; and his impassioned closing appeal to the jury that since this was war, terrible, cruel war, he was calling upon the jury as a representative of his Government to do their duty and protect all of us, as the defenders on Bataan Peninsula were then doing.

No other possible interpretation can be placed on his reference to the late Senator Lundeen as "possibly more fool than rogue; certainly something of both," and as having been an extortionist because he entered into an agreement with some of his office help to pay a part of their salaries into an office expense account. He did not call Congressman Day as a witness but he did call Congressman Fish and petitioner submits that there seldom, if ever, has

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[10]Washington, in his Farewell Address, anticipated that such a state of affairs might come about. He said:

> "* * * Excessive partiality for one foreign nation and excessive dislike of another cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real patriots who may resist the intrigues of the favorite are liable to become suspected and odious, while its tools and dupes usurp the applause and confidence of the people to surrender their interests."

been such a scene in an American court-room as that staged by this chief prosecuting attorney in his effort to heckle and impung the patriotism of a member of Congress—patriotism and bravery which that member of Congress had shown on the field of battle and recognized by the decorations bestowed upon him—and last but not least, which his people recognized and appreciated when, following such esisode, they overwhelmingly reelected him to his seat in the House of Represetatives!

This brief has heretofore referred to this prosecutor's reference to Senator Holt and to ex-Congressman O'Connor (Ante, pp 19-20). The trial court was requested in a formal motion to restrain this prosecutor from giving interviews, releases or holding press conferences with representatives of the press concerning this case before, after and during the trial of the case (R 229) and that motion not having been granted, a formal complaint in a letter of February 11, 1942, was lodged with the Attorney General against the activities of this prosecutor in these respects (R 230-232).

This letter and certain news stories in the Washington newspapers were brought to the attention of the trial court in a renewal of the motion for a change of venue but the motion was denied in its entirety (R 228-236).

All of this and the hereinbefore referred to introduction in evidence of petitioner's book, *Spreading Germs of Hate*, published approximately ten years before the alleged crimes and concerning events a quarter of a century prior thereto, [11]as well as the reading of extracts therefrom to the

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[11]There was then, and there is now, nothing to show what prior acts, in 1914 to April 1917, are similar or of a kindred character to what acts in 1939-1941 charged in the indictment. Such a showing is necessary. *Partridge* v. *United States*, 39 App. D. C. 571; 46 Harvard Law Review 954-985; 50 Harvard Law Review, 998-1037; Crowe & Camp, 11 Encyclopedia on Evidence (1905) 627-642. The book was not relevant.

2 Starkie, *Evidence*, 381: "No new matter foreign to the issue joined is admissible in evidence." Foster, *Common Law*, 246: "The rule rejecting all manner of evidence in criminal

jury were apparently calculated to, and did, result in the trial of petitioner for being an alleged propagandist in the service of his "Teutonic overlords in Berlin" and in league with other men of alleged questionable patriotism having the purpose, at least on the part of petitioner, to "divide us and literally beat our brains out" (R. 159).

There can be no doubt that petitioner was tried for being a propagandist, with the inference and without any proof whatever to support it that he was doing this for his "Teutonic overlords in Berlin," and as a "traitor to his country." The chief prosecuting attorney was formally charged by petitioner's trial counsel and the charge was not denied, with being seen in conference with a particular reporter for one of the Washington newspapers[12] and this prose-

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prosecutions that is foreign to the point in issue is founded on sound sense and common justice."

United States v. *Corwin*, 129 U. S. 381, 386: "Incompetent and irrelevant evidence cannot be converted into competent and relevant evidence simply because it is contained in an official document." The book was not evidence of similar acts.

Johnston v. *Jones*, 1 Black U. S. 209.

United States v. *Jones*, 8 Peters 399.

Albany & R. Iron & Steel Company v. *Lundberg*, 121 U. S. 451.

Delaware, L. & W. R. Company v. *Converse*, 139 U. S. 469. Underhill, *Criminal Evidence* (3rd Ed. 1933) pp. 187-211. The book not having been a previous crime similar to that charged in the indictment and not having been shown to represent the intent of appellant in 1939-1941 was not relevant and admissible under any theory of the case. See also 2 Wigmore *On Evidence*, (2nd Ed. 1923) 696-717, and Camp & Crowe, *The Encyclopedia of Evidence*, (1905), (pp. 627-642) for full discussion of rules. *Anderson* v. *United States*, 170 U. S. 481.

Moreover, the trial court failed to instruct the jury as to the probative extent of the book and such failure in itself constitutes reversible error.

Williamson v. *United States*, 207 U. S. 425; *Shreve* v. *United States*, 103 Fed. 2d, 796; *Dysart* v. *United States*, 270 Fed. 77; and *Tedesco* v. *United States*, 118 Fed. (2d) 737.

[12]Supposed leaks from the grand jury to this reporter had become such that the matter was discussed by Congressman Hoffman on the floor of the House of Representatives (*Congressional Record*, April 20, 1942, p. 3675) as follows:

> "Getting back now to this question of secrecy of the proceedings before the grand jury. In this article in the

cuting attorney unquestionably did hold aloft to the jury in his arguments a copy of the petitioner's book on propaganda, *Spreading Germs of Hate*, with the statement that it was the text of the government and the epitaph, in one instance, and the obituary, in the other, of the petitioner. This prosecutor unquestionably did refer, in the presence of the jury, to the "nefarious activities" carried on by the petitioner "in an apartment at 305 Riverside Drive, New York City, where he lived" (R. 157).

This prosecutor did unquestionably state to the jury that "We are trying defendant Viereck on a charge of propagandizing" (R. 154) and it is equally unquestionable that Counts II, III and V of the indictment charged wilful omission of material facts concerning a part of petitioner's

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Washington Post the reporter stated that the list of those who had received copies of the speech 'Don't Haul Down the Stars and Stripes,' included at least a dozen. The article then gave the names of nine persons, one in Kansas City; one at Wichita, Kansas; one in Cleveland; one in Washington; one in Hempstead, L. I.; one in Lincoln, Nebr.; another in Detroit, Mich.; another in Brooklyn, N. Y.; another in San Francisco.

"Certainly the reporter did not get those names from me, nor did he get them from anyone in my office. Where did he get them? Does he claim that he traveled to those various cities, interviewed the recipients? And how did he know who they were?

"Certainly, Mr. Maloney, as special prosecutor did not give out that information. Is it possible that Mr. Maloney, the individual, inadvertently, unintentionally, let it leak out?

"I would like the privilege of cross-examining that reporter under oath. I would like the privilege of having him called before a committee of the House and then be given the opportunity to inquire into his activities.

"Where did he get that information? Certainly he did not get it from any member of the grand jury. No one on that grand jury would violate his oath about disclosing information of that kind. Where did the gentleman get it? Let Mr. Maloney answer, if he knows. Let his investigators answer. Let those who guard the secrecy of the grand jury room make answer. There is the list of seven or more names who obtained copies of that speech. From whence came that information?"

business and activities from the supplemental registration statements and not with propagandizing. Authorities on such misconduct are collected in a footnote.[13] Further,

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[13]"The United States prosecuting attorney overstepped the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense" in *Berger* v. *United States*, 295 U. S. 78, 84. The court there said among other things, that:

> "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

It is true, as the court below pointed out, that petitioner's associate trial counsel did not immediately object to the inflammatory closing argument of the prosecuting attorney to the jury but he did so when there remained ample time and opportunity for the court to have properly instructed the jury against such an argument as it was held should have been done in *Hall* v. *United States*, 150 U. S. 76, 82, because of an improper argument of the prosecuting officer of the United States which constituted "a breach of professional and official duty." See also the opinion in *Frisby* v. *United States*, 35 App. D. C. 513. As a matter of fact, the court having removed petitioner's chief trial counsel from the case should have stopped such an argument on its own motion. *Glasser* v. *United States*, 313 U. S. 551, reversed 86 U. S. Law ed. 405.

This is not the first time that such a charge as this of misconduct has been made against prosecutor Maloney.

The United States Circuit Court of Appeals for the Second Circuit has his misconduct before it in *United States* v. *Buckner*, 108 Fed. (2d) 921, and in *United States* v. *Dubrin*, 93 Fed. (2d) 499, at pages 505 to 506. The *Buckner* case was a prosecution for use of the mails to defraud. The court there said, at page 928, with respect to his conduct:

> *"The trial conduct of the Assistant United States Attorney.* All defendants lay great stress upon the mis-

it is an unquestionable fact that neither the Act of 1938 as amended by the Act of 1939 nor the New Act of 1942 made "propaganda", as such, a crime. Only the latter Act required the reporting of propaganda and its labelling as such (See Sec. 4 thereof, Pet. Br. 77-78).

The general charge of the trial court to the jury, which was excepted to by petitioner (R. R. 22-26) could have had no other effect than to impress on the minds of the jury that they were called upon to determine the guilt or innocence of the petitioner as a propagandist rather than his wilful omission of material facts in answer to the requirements of Paragraphs 11 of the three supplemental registration statements.

Finally, the granting of the prosecution's prayers 2A, 2 and 8 (R. 101-114) over the objections of petitioner and the denial of petitioner's prayer No. 19 (R. 96-101) sealed petitioner's fate with the jury because all that it had to do to convict was to find that petitioner engaged in some of the activities charged in the indictment without being under the necessity of finding that in engaging in them the petitioner acted as the agent of any foreign principal or that he en-

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conduct of the Assistant United States Attorney. They complain of the spectacular and prejudicial manner in which he managed the trial as a whole, and also attack particular instances of misbehavior in examination of witnesses and in colloquies with opposing counsel. Even from the printed record we can see the vigor with which the prosecutor pressed the case, vigor which at times went beyond the canons of decorum and dignity which an officer of the United States should observe. The prosecutor was not averse to indulging his talent for spectacle: Chorus girls and movie stars were paraded to the stand to prove only minor portions of the Government's case. Theatrical demonstrations, however diverting to the spectators, and jury, have no place in a United States court room. Nor was the intemperance of several attacks made upon defendants and their counsel in keeping with the Supreme Court's reminder that the prosecutor is to regard himself as 'the servant of the law,' *Berger* v. *United States*, 295 U. S. 78, 55 S. Ct. 629, 79 L. Ed. 1314. We cannot approve such conduct."

gaged in them for hire which hire made them a part of his business from which he derived a part of his livelihood, or at least some income. We repeat that no evidence whatever was even offered to prove that in engaging in these non-interventionist activities the petitioner acted as the agent of any foreign principal or that he derived one dime of income therefrom or that he wilfully failed to report them.

Petitioner believes this to have been wholly wrong and that in making a fight for his constitutional liberties he is waging the cause of all others in minorities who may take the losing side of any great argument and who may find themselves prosecuted by a Government in which the winning side of the argument is predominant.

(b).

The Charge in the Indictment was no Crime under the Statute.

The charge in the remaining three Counts II, III and V of the indictment is that petitioner wilfully omitted to state in answer to Paragraphs 11 of the three supplemental registration statements certain activities charged therein. The court below summarized in its opinion that the evidence related to the charge that petitioner failed to report (1) That he had been instrumental in having mailed out a large number of reprints from the Congressional Record which were read into the transcript of the proceedings in the trial court; (2) That he made certain loans to Flanders Hall, Inc., which printed a number of booklets, anti-British in character, from manuscripts furnished by petitioner and some of which were plagiarisms of booklets published in Germany; (3) That petitioner assisted Senator Lundeen in writing three speeches which were not anti-American in character; and (4) That petitioner was connected with certain War Debts Committees.

The transcript of the proceedings in the court below may be read from beginning to end—and by far the principal part of it consists of the testimony, etc., of the prosecution

and we submit that (1) There is no proof that the petitioner engaged in any activities in any degree hostile to the United States; (2) That the reprints of the addresses, all non-interventionist in character, which were mailed out contained nothing whatever disloyal to our country and that the evidence fairly connects the petitioner with the mailing out of only one of them; (3) That the three addresses delivered by the late Senator Lundeen and which it is claimed that the petitioner assisted him in preparing were not anti-American in any respect whatsoever; and (4) That petitioner's connection with Flanders Hall, Inc., was nothing more than an ill-advised business venture of an author and journalist with so little knowledge of business that he lost more than half of his loans to the said company.

None of these activities was made a crime under the 1938 Act as amended. None of these activities could be fairly stated to be the "business" of petitioner. None of them was anti-American in character or sought the ends referred to in the trial court's general charge to the jury. (R. 92-96.) Petitioner not only admittedly lost a large part of the Flanders Hall, Inc., loans, but it is not even suggested in the proof, much less proven, that petitioner made a single dime in any of these activities. It is likewise not proven that he was acting as the agent of any foreign principal in his efforts to show that the United States should not enter the war at all, much less on the side of England which some believe to have been imperialistic in dealing with South Africa, Egypt, and India.

Certainly, as a neutral nation, our citizens—and petitioner had been one for many years—could legitimately resort to these arguments in attempting to convince fellow-Americans that they should not espouse the English cause in the war. He had as much right to make that argument as the interventionist had to make a contrary one. After all, in a Republican form of government, the people are entitled to the pros and cons of any question before they are required to decide.

(c).

When petitioner answered "Author and Journalist" he fully and fairly answered the requirement of Paragraph 11 of the supplemental registration form that he give a "Comprehensive statement of the nature of business of registrant."

It fairly appears in the record that petitioner had been an author and journalist all of his mature life. (168-177.) The prosecution conceded that petitioner had been a prolific writer of books and magazine articles. (R. 175.) It was precisely because of his writing ability that he was employed by both the Munich newspaper and by the German Library of Information as proven by the terms of the respective contracts. (24-25, 25-26, 48-50.)

When called upon to state the "nature of business of registrant" in answer to Paragraph 11 of the original and supplemental registration forms, petitioner answered "Author and Journalist"—the answer being by the use of such words in the original registration form and by the use of the word "Same" in the supplemental forms in accordance with the directions for preparing such supplemental registration statements. (R. 27, 30, 44.)

According to the definition of the word "business," hereinbefore quoted in this brief from Crabb's *English Synonyms* (*ante*, pp. 7-8) business occupies all a person's thoughts as well as his time and powers; requires diligent prosecution for success in life; and the exercise of one's knowledge and experience for the purpose of gain. Petitioner was not called upon to give a detailed statement of his business but a comprehensive statement as to the nature thereof and certainly the words "author and journalist" were comprehensive. To a generic requirement, petitioner made a generic answer.

The general purpose of the 1938 Act as amended may not be invoked to supersede the specific requirements of the amended Section 3 of the Act which was exclusively confined to supplemental registration statements and their con-

tents. The Act itself in Sections 3(a) and (b) stated specific requirements but Section 3(c) left to the Secretary of State the responsibility for fixing the requirement. He did fix it in Paragraph 11 and it did not call for "activities."

It is repeated that the specific requirements of Section 3 of the Amended Act of 1938, and of Paragraph 11 of the supplemental registration forms are controlling under well settled rules of interpretation, over the general terms of the statute and Paragraph 12 of the Regulations.

Child Labor Cases, 259 U. S. 20.
United States v. *Chase*, 135 U. S. 260.
The Paulina v. *United States*, 7 Cranch. 52.
Smith v. *Townsend*, 148 U. S. 490.
Townsend v. *Little*, 109 U. S. 504.
Kepner v. *United States*, 195 U. S. 100.

This applicable rule is in addition to the rule hereinbefore stated that penal laws must be construed most strongly in favor of the accused.

The disregard of these rules of statutory interpretation is one of the reasons why the general instructions of the trial court to the jury (R. 92-96) were so prejudicial to the petitioner in their devastating effect, particularly when coupled with the allowance of the prosecution's prayers 2A, 2 and 8 as instructions to the jury. (R. 101-114.)

As was stated by Petitioner in his brief to the court below (Pp. 20-21) it should be immediately noticed that—

> "* * * two words have been added in the indictment to the language of Paragraph No. 11 of the form prescribed by the Secretary. The two words are 'and activities' after the word 'business.' Furthermore the word 'part' has been substituted for the word 'nature.'
>
> "Why were these changes made in the charging part of the indictment? It cannot be by accident. Is it because the meaning of the added and substituted words are the same as those to which they are added or for which they are substituted?
>
> "A request for the *nature* of one's business asks something about the business: what kind is it? A

request for the *'activities'* of the registrant asks for some information, not about the business, but about him, the registrant: what has he been doing? what acts? An entirely different inquiry—as was recognized by the Congress in the subsequent New Act providing in Section 2(a) (3) that a registrant must give a comprehensive statement of the nature of his business and in Section 2(a) (4) and (6) that he must report all of his activities.

"The fact of the addition by the drafter of the indictment of the words 'and activities' gives far greater latitude as to what can be alleged and proved. Under 'nature of business' the facts to be elicited are limited to the kind of business. On the other hand, the inquiry into the 'activities' of the registrant may include *all the acts done by him*, not only in his business, but in addition, all the acts of every kind and nature done by the registrant during the period under inquiry; that is, the indictment anticipated the requirements of the New Act of April 29, 1942."

It was because of this attempted change in the terms of Section 3(c) of the Act of 1938 as amended and of the terms of Paragraph 11 of the supplemental registration form and the failure of the trial court to sustain either the demurrer or the motion to dismiss as to these three counts of the indictment pertaining to the supplementary registration statements, that the floodgates of testimony were opened and the chief prosecuting attorney could not only secure the introduction in evidence of *Spreading Germs of Hate* and read copiously therefrom during the course of the trial, but could succeed in convincing the jury that the petitioner was serving his "Teutonic overlords of Berlin" and was trying to divide us and literally beat our brains out!

Without laboring this point we respectfully submit that petitioner fully and fairly answered Paragraphs 11 of the three supplemental registration statements; that he was indicted for one offense—of failing to report "as a part of his business and activities" certain activities named in the indictment—not covered by Section 3 of the amended

Act of 1938 and Section 5 of the unamended Act of 1938; and that he was tried for another offense—that of being a propagandist—in league with the forces of evil—which likewise was not within said sections of the statute. In addition, we submit that the efforts of the chief prosecuting attorney, Mr. Maloney, went far beyond what should be the efforts of a Government attorney in any case—to see that justice is done in accordance with the law and the facts, nothing more and nothing less!

III.

There Was No Wilful Intent Shown of Petitioner to Violate the Law Requiring the Registration of Agents of Foreign Principals.

Petitioner filed all of the requisite original and supplemental registration statements. A demurrer was sustained as to Counts I and IV of the indictment relating to the original registration statements. It is not charged in the indictment that petitioner violated the law in his answers to any of the 19 paragraphs of the three supplemental registration statements except Paragraphs 11 requiring that he "Give a comprehensive statement of the nature of business of registrant."

In other words, petitioner fully and completely answered all of the paragraphs of the original registration statement which he was required by Section 2 of the unamended Act of 1938 to answer. Also, he fully and completely answered all of the paragraphs of the supplemental registration statements which he was required by Section 3(a) and (b), as amended, to answer. His indictment is on the alleged ground that he did not fully answer Paragraphs 11 of the supplemental registration forms and which Paragraphs 11 find their basis in Section 3(c) of the 1938 Act as amended, though the prosecution attempts to rest that paragraph of the supplemental registration form on paragraph 12 of the Regulations and failing that, to fall back upon the general

terms of the statute to prevent propaganda in the United States.

We have heretofore pointed out that petitioner—to the point of making himself a nuisance—persisted in notifying the Department of State of each of his contracts of employment, forwarding copies thereof, and inquiring whether he was expected to do anything more. Also, we have pointed out that two of the three supplemental registration statements forming the basis of two counts of the indictment were executed before his chief trial counsel as notary public and that his second original registration statement was likewise so executed. The inference is unmistakable that he took these statements to his attorneys and secured their advice before they were executed and filed with the Secretary of State.

Williamson v. *United States*, 207 U. S. 425, and *United States* v. *Murdock*, 290 U. S. 389, are in point.

In the *Williamson case* the indictment was against a member of the Congress and two others for conspiring to commit the crime of subornation of perjury. Mr. Justice, later Chief Justice, White delivered the opinion of the Court and stated at page 453 with respect to the question of reliance upon the advice of counsel, as follows:

> "Without attempting to review in detail the requested charges concerning motive and intent and the effect of advice of counsel, we think the trial judge in instructing the jury on the subject went as far in favor of the accused as it was possible for him to go consistently with right, and therefore there is no ground for complaint as to the failure to give the requested charges. The court after having fully and carefully instructed the jury as to the operative effect of good faith in relieving the defendants from the charge made against them, in express terms noticed the question of advice of counsel and said:
>
> "'Having now placed before you the timber and stone Law and what it denounces, and what it permits, if a man honestly and in good faith seeks advice of a lawyer as to what he may lawfully do in the matter of

loaning moneys to applicants under it, and fully and honestly lays all the facts before his counsel, and in good faith and honesty follows such advice, relying upon it and believing it to be correct, and only intends that his acts shall be lawful, he could not be convicted of crime which involves wilful and unlawful intent; even if such advice were an inaccurate construction of the law. But, on the other hand, no man can wilfully and knowingly violate the law and excuse himself from the consequences thereof by pleading that he followed the advice of counsel!

* * * * * * *

"But, as of course, in a criminal case, doubt must be resolved in favor of the accused, we hold that the indictment does not charge conspiracy to suborn perjury in respect to making of the final proofs, and therefore that there was prejudicial error committed in the instructions to the jury which were excepted to."

The *Murdock case* was a prosecution under the Internal Revenue Act for "wilfully" failing to supply information, which defendant had refused to supply on the ground that to do so might subject him to prosecution under State Laws. The defendant requested the following instruction: "If you believe that the reasons stated by the defendant in his refusal to answer questions were given in good faith and based upon his actual belief, you should consider that in determining whether or not his refusal to answer the question was wilful."

Mr. Justice Roberts delivered the opinion of the Court, defined wilfulness as used in criminal statutes and in approving the requested instruction stated that:

"This court has held that where directions as to the method of conducting a business are embodied in a revenue act to prevent loss of taxes, and the act declares a wilful failure to observe the directions a penal offense, an evil motive is a constituent element of the crime. In *Felton* v. *United States, supra*, the court considered a statute which * * *. In an action for the statutory penalty the conduct of the distiller was held not to be wilful within the meaning of the law.

"Aid in arriving at the meaning of the word 'wilfully' may be afforded by the context in which it is used (*United States* v. *Sioux City Stock Yards Co.*, 162 Fed. 556, 562), and, we think, in the present instance the other omissions which the statute denounces in the same sentence only if wilful, aid in ascertaining the meaning as respects the offense here charged. The Revenue Acts command the citizen, where required by law or regulations, to pay the tax, to make a return, to keep records, and to supply information for computation, assessment or collection of the tax. He whose conduct is defined as criminal is one who 'wilfully' fails to pay the tax, to make a return, to keep the required records, or to supply the needed information. *Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return, or as to the adequacy of the records he maintained, should become a criminal by his mere failure to measure up to the prescribed standard of conduct. And the requirement that the omission in these instances, must be wilful, to be criminal is persuasive that the same element is essential to the offense of failing to supply information.*

"* * * *Here we are concerned with a statute which denounces a wilful failure to do various things thought to be requisite to a proper administration of the income tax law, and the Government, in the trial below, we think correctly, assumed that it carried the burden of showing more than a mere voluntary failure to supply information, with intent, in good faith, to exercise a privilege granted the witness by the Constitution. The respondent's refusal to answer was intentional and without legal justification, but the jury might nevertheless find that it was not prompted by bad faith or evil intent, which the statute makes an element of the offense.*" (Italics mine.)

Here the prosecution made no effort to carry the burden of showing more than a mere failure to report the alleged omitted activities, every one of which was, either directly or indirectly, non-interventionist in character and not one of which was hostile to the institutions of the United States Government. If it be said that peti-

tioner did not request sufficiently specific instructions on the necessity for, and burden of proof in establishing wilful intent to omit material facts from the supplemental registration statements, the failure to do so is due to the fact that the chief defense trial counsel was taken out of the case before the prayers for instructions were prepared and submitted. Due to this fact, an even greater burden rested upon the trial court to see that petitioner's legal rights did not suffer by the forced withdrawal of the chief defense counsel. See *Glasser* v. *United States, supra.*

Scienter.

"Scienter" seems to be chiefly relied upon by the prosecution to establish a wilful omission to violate the 1938 Act as amended, citing *United States* v. *Ragen*, 314 U. S. 513 and other cases. (Gov. Br. 25-26.) This word "scienter" is retained from an old Latin form of pleading, signifying, in the connection commonly used, that the alleged crime was done designedly, understandingly, knowingly, or with guilty knowledge. *People* v. *Gould*, 237 Mich. 156, 211 N. W. 348.

Apparently the attempt to establish scienter on the part of petitioner for omitting to name the charged activities in answer to Paragraphs 11 of the three supplemental registration statements is based on extracts from his book, *Spreading Germs of Hate*, wherein the petitioner has pointed out the necessity for the concealment of the origins of propaganda if it is to be effective. This book was not a concealment; it was a revealment and written for the laudable purpose of attempting to make the people of the United States immune to propaganda. That book concerning events in 1914 to 1919 most certainly can not be used to establish that in 1940 to 1941, during the period covered by these three supplemental registration statements, the petitioner designedly, understandingly, knowingly or with guilty knowledge omitted to report the charged

activities in response to the requirements of Paragraphs 11 of the said statements.

The evidence in the record negatives any such conclusion. In addition to petitioner's concern that he duly and properly conform to the law and the forms in registering, lack of wilful intent on his part is shown by the evident fact that he consulted with his counsel as to the preparation and filing of two of the three supplemental registration forms; and the further fact that he cancelled one of his foreign agency contracts on July 2, 1941 and the other on September 8, 1941, while there remained in effect the Neutrality Act of 1939 and diplomatic relations continued with the German Reich.

The book itself shows something of petitioner's loyalty to the United States during the last World War when he assisted in Liberty Bond drives, located persons on farms who could help produce food for winning the war and not be a burden on the taxpayers, and he received official thanks for "effectiveness of his official advice." (Gov. Ex. 12, p. 167.)

IV.

The Court Below Erred in Not Reversing the Trial Court for Errors in Instructions to the Jury.

(a).

Error in giving general instruction as to purposes of the 1938 Act as amended.

Aside from the fact that reports of Congressional Committees may not be referred to in interpreting a statute which is clear on its face and not ambiguous and that the intent of a criminal statute must be drawn from the four corners thereof, the trial court over-shot the case before it. The instructions of the court went far beyond the charges in remaining Counts II, III and V of the indictment.

This was not a case of failure to register, or even failure to file the requisite registration statements. All these had

been filed within the time allowed therefor. The two original registrations were not before the jury because the demurrer had been sustained as to Counts I and IV of the indictment which concerned them.

In a trial for wilfully omitting to report "as a part of his business and activities" in response to Paragraphs 11 of the three supplemental forms, all of the discussion of the court in its general charge to the jury about the purposes of the 1938 Act, as amended, as shown by the Committee Report in 1935 (House Report No. 153, 74th Congress, February 15, 1935) had no place in the case. What it in fact did do was to tie into the charge of the prosecuting attorney that petitioner was being tried for propagandizing; that he was serving his "Teutonic overlords in Berlin"; whether Congressman Fish would know a propagandist if he saw one; etc., etc.

Petitioner was being tried under Section 3 of the amended Act; the penal provision in Section 5 of the unamended Act; Paragraph 11 of the supplemental registration forms; and the regulations relating to supplemental registrations. Extended discussion of the contents of a 1935 House of Representatives' report in a general charge to a jury concerning an alleged crime arising under a 1938 Act amended in 1939 of wilfully omitting to report certain activities was clearly erroneous and under the circumstances constituted reversible error. If allowable at all, such a charge more nearly fitted a case where the defendant had failed to register.

Standard Fashion Co. v. *Magrane Houston Co.*, 258 U. S. 346.
Railroad Commission v. *C. B. & Q. R. R.*, 257 U. S. 563.
McLean v. *United States*, 226 U. S. 374.
Binns v. *United States*, 194 U. S. 486.
Caminetti v. *United States*, 242 U. S. 470.

(b)

Error in giving the Government's prayers Nos. 2A, 2 and 8 and in refusing to give petitioner's prayer No. 19.

These four prayers, the objections and the exceptions thereto are contained in the Record (R. 96-114). By the denial of the petitioner's prayer and the grant of the other three, the trial court, in effect, instructed the jury that if it found the petitioner omitted to report any material activity charged in the indictment and proved by the evidence, the jury could convict the petitioner without the necessity of determining whether in such omitted activity the petitioner was acting for a foreign principal or on his own initiative and for his own purposes.

There has been discussed elsewhere in this brief the position of petitioner that he was not required to report any activities in response to Paragraphs 11 of the supplemental registration forms, only "Give a comprehensive statement of nature of business of registrant" and that he certainly was not required to report any activities except such as he might have performed for a foreign principal for hire—and since he performed none, there was nothing concerning activities for him to report.

It will be added here that these three government prayers and the court in granting them anticipated the requirements of the New Act of April 29, 1942, which provided in Section 2(a) (4) and (6) that a registrant must report as "material" information:

> "(4) * * * the existing and proposed activities engaged in or to be engaged in by the registrant as agent of a foreign principal for each such foreign principal."
>
> "(6) A detailed statement of every activity which the registrant is performing or is assuming or purporting or has agreed to perform for himself or any other person other than a foreign principal and which requires his registration hereunder." (Pet. Br. 73.)

The original Act of 1938, as amended, by the Act of 1939, as well as the New Act of April, 1942, are printed in the appendix to petitioner's brief for the writ of certiorari and the Court's attention is invited to the fact that the latter Act is as detailed and complete as the original Act as amended is incomplete. The Government has referred in its brief below and in its brief here to a statement in a Committee report that this Section 2 of the New Act is merely declaratory of the requirements under Section 2 of the then existing statute. (Gov. Br. 18.)

In the first place, an examination of the two Sections 2 in the 1938 Act and in the 1942 Act is sufficient to show their vast differences.

In the second place, there is involved here Section 3 of the 1938 Act, as amended, pertaining to supplemental registrations. The petitioner was not tried and convicted for failing to properly file original registration statements, under Section 2 of the 1938 Act. While he was indicted for alleged failure to do so, these Counts I and IV were thrown out on demurrer. Petitioner was tried and convicted for alleged failure to file supplemental registration statements which were issued under, and which registration forms were issued pursuant to Section 3 of the 1938 Act as amended.

The New Act of 1942 combines in Section 2, both Sections 2 and 3 of the 1938 Act as amended and adds many new and detailed requirements.

Regardless of such statements in a Committee report, we have here two different statutes both in terms and in arrangements.

V.

The Court Below Erred in Not Reversing the Trial Court Because It Added to the Penalty Provided in Section 5 of the 1938 Act.

This penal Section 5 of the 1938 amended Act is quoted in full elsewhere in this brief (*ante*, p. 38) and it is also printed in the appendix to the petitioner's brief for cer-

tiorari. (P. 66.) It provides for punishment, upon conviction, of a fine not exceeding $1,000 and for imprisonment for not exceeding two years. Under each of three counts of the indictment relating to three supplemental registration statements, the petitioner was sentenced to pay a fine of $500 on each count, to be imprisoned in a penitentiary for a period of eight months to two years on each count, and to pay the costs of the trial (R. 325), the sentences to run consecutively and not concurrently.

The said Section 5 of the indictment does not authorize the additional penalty of the costs of the trial. This additional penalty was purportedly imposed pursuant to a section in the Act of May 8, 1792, c. 36, (1 Stat. 277) (28 U. S. C. 822) which provide that:

> "822. *Same: fines or forfeitures.* When judgment is rendered against the defendant in a prosecution for any fine or forfeiture incurred under a statute of the United States, he shall be subject to the payment of costs; and on every conviction for any other offense not capital, the court may, in its discretion, award that the defendant shall pay the costs of the prosecution."

This prosecution, of course, was not one for a fine or forfeiture as that term is used in the fiscal laws of the United States, to which the 1792 statute apparently relates with respect to this section. The sentence, if sustainable at all, must be sustained under the latter part of the Section that "on every conviction for any offense not capital, the court may, in its discretion, award that the defendant shall pay the costs of the prosecution."

We think that this sentence can not come under this latter part of the Section. The petitioner was subjected to a penalty of a fine and imprisonment, as specifically provided in Section 5 of the 1938 Act. This latter statute, being some one hundred and fifty years subsequent to the 1792 statute, fully covered the entire subject matter and specifically provided the penalty to be imposed. Presumably the fine authorized and imposed in this case had some relation

to the expense of prosecution. The imposition of a further penalty of the costs of the prosecution amounts to a double penalty.

It is admitted by petitioner that the cases are none too clear on this point. *Re Swan*, 150 U. S. 637, left the question undecided. *Oates* v. *United States*, 233 Fed. 201, 207, was a sentence, in contempt proceedings, of imprisonment and costs of the trial under Section 268 Judicial Code (28 U. S. C. 385) which authorized a fine or imprisonment as punishment. The court did not impose imprisonment and a fine and cost of the trial, as here, but only imprisonment and costs. Other questions were involved and this Court denied certiorari in 242 U. S. 633.

Whitworth v. *United States*, 114 Fed. 302, upon which the court below relied, was a sentence of imprisonment and fine and costs of the trial for embezzling funds of the United States. Title 18, U. S. C. 355 authorized imprisonment or fine equal to the amount of money embezzled or both. The trial court imposed a sentence of imprisonment, a fine and the costs of the trial but the Court of Appeals filed an opinion reversing the sentence because of the additional penalty of the fine. Some time later, the exact date not being shown, the court appended what appears to be an *ex parte* statement at the foot of the opinion, to the effect that its attention had not been invited to what is now Title 28, U. S. C. 822 and that the said court was in error in reversing the case.

Upon principle, it would appear that when a statute has fully covered the subject matter—in this case the penalty of fine and imprisonment for alleged violation of said statute—such covering is exclusive and inclusive. The court is not justified in going back to a general statute of a Century and a half ago to add to that penalty of fine and imprisonment the costs of the trial—which costs may many times exceed the amount of the statutory penalty. If the 1938 Act had not provided for a cash penalty or if the prosecution had been under the fiscal laws of the United

States, it may be that a different question would be presented.

CREDO OF THE PETITIONER.

The petitioner has written many books, both of prose and poetry, and he has written many magazine articles. The prosecution has seen fit to single out one of these books, *Spreading Germs of Hate,* and by reading to the jury and bringing to the attention of the Court isolated passages therefrom, the Government seeks to sustain a conviction and sentence which petitioner believes to be most unjust. It seems well in closing this brief to invite the attention of the Court to another book written by the petitioner entitled *The Seven Against Man.*

This essay was originally published in *Books Abroad,* a literary quarterly edited by the University of Oklahoma, and it was issued in book form about 1940. The book was introduced in evidence in the trial (Tr. 1322) and an extract therefrom read to the jury. (Tr. 1368-1379.) In this book, petitioner referred to Galileo, Luther, Rousseau, Darwin, Karl Marx, Freud, and Einstein as thinkers who have disturbed man's sense of security in this world and said that:

> "Weary of frustration, man seeks happiness in strange paths. The turmoil of the human race, the strange revulsion of the spirit which gave birth to the Totalitarian State, are mankind's desperate efforts to create a new certainty, a new absolute, a new religion, to find somewhere, somehow, Salvation. They are the ache of Chaos struggling to subdue itself. For the Divine Order of the past, the Nazis substitute for blood and soil—*Blubo;* Mussolini, syndicalism and his own omnipotence; Bolshevism, the Dictatorship of the Proletariat incarnated in Stalin; Roosevelt, fumblingly, the New Deal. Wittingly or unwittingly, Roosevelt treads the same path as those whom he calls 'dictators.'"

* * * * * * * * *

"The Totalitarian idea may save us from wreckage in a storm; as a temporary refuge it may serve nations and individuals in dire emergencies. National Socialism was Germany's only salvation at this particular juncture of time and history. The new energies released in the nation by the genius of Hitler may compensate the German people for the sacrifices imposed by the iron discipline which the Nazi creed imposes on the individual. But National Socialism is not a universal panacea.

* * * * * * * * * *

"Whatever shape it may assume in the New World or the Old, collectivism as a final objective is not compatible with human dignity. Collectivism, unless it assumes forms not yet discernible today, spells the end of all progress and reduces man to the state of the insect, the insect that never changes in a million years; the insect that pays for its ordered life with the complete loss of individuality. It sometimes seems to me that even chaos is preferable to a soulless society, eternally frozen. While there is chaos there may be hope. The way of the bee and the ant, may be the way of the life to come; it may be the next and final phase of human evolution. I, for one, prefer the nobler past and a less inglorious future."

CONCLUSION.

Upon the whole case, it is submitted that the courts below should be reversed with direction that the indictment in its entirety be dismissed as not stating a crime against the United States.

Respectfully submitted,

O. R. McGuire,
Attorney for Petitioner,

January 5, 1943.

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IN THE

Supreme Court of the United States

No. 458.

GEORGE SYLVESTER VIERECK, *Petitioner*,

v.

THE UNITED STATES OF AMERICA.

On Certiorari to the United States Court of Appeals for the District of Columbia.

PETITIONER'S REPLY BRIEF.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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PRELIMINARY STATEMENT.

Out of 19 questions in each of three supplemental registration forms, petitioner concededly answered correctly the 18 which were framed on the basis of specific requirements, or standards stated in the 1938 Act as amended. The only one of the 19 questions that the prosecution claims he did not correctly answer was Question 11 which was not based on any such standard stated in the statute.

As to the activities named in the indictment, which it is claimed that petitioner should have reported in answer to

this Question 11, he made no attempt to conceal that he loaned Flanders Hall, Inc., the sum of $22,500. Petitioner knew that the FBI had investigated the books of Flanders Hall early in January 1941 and again in March 1941 (Tr. 442-445, 456-458). As the Government has correctly stated, petitioner had been a witness before the committee that eventually reported the bill which became the Act of 1938, as amended. He was most careful to comply with what he thought were the requirements. There was ample opportunity for petitioner to have given in reply to paragraph 11 of the supplemental registration statement filed in April 1941 an answer different from the answers made in the two previous supplemental registration statements had he believed, or had he been advised by his attorneys that his previous answers were not complete answers to the said paragraph.

Petitioner has never denied that he assisted former Senator Lundeen in preparing at least three speeches which the Senator delivered and at least two of which were published in the Congressional Record. Petitioner has never denied that in one instance, only, he acted as the intermediary for his friend, Senator Lundeen, in assisting to make arrangements with Hill to mail out the speeches for Lundeen, and for which Lundeen paid Hill. There was nothing secret about such activities.

Petitioner has never admitted—and the prosecution did not charge in the indictment nor prove nor attempt to prove—that he was the agent of any foreign principal in connection with these activities or that he received a dime from any source whatever therefor.

Petitioner has never admitted—and we submit that the Government has not proved by any evidence worthy of credence—that he had anything whatever to do with the organization of any of the so-called War Debts Committees; or that petitioner had inserted in the Congressional Record any material, had any reprints made, paid for any reprints, or authorized or directed any one, including the

War Debts Committees to mail out any of such reprints under congressional frank or otherwise.

No attempt was made by the prosecution to show that petitioner requested, authorized or directed Hill and Dennett in having material inserted in the Congressional Record; in obtaining reprints thereof; in furnishing the money or any part thereof to pay for the reprints; or in mailing out the reprints.

The prosecution has relied upon the testimony of the two witnesses Webbers, husband and wife, employed by the War Debts Committees to address envelopes and mail out reprints, to establish the connection between petitioner and the War Debts Committees. This evidence is fully discussed in our main brief (pp. 24-25). We submit that such evidence was not the best evidence to establish any such connection; that the evidence is insufficient to establish such connection; and that even if petitioner had advised or assisted in establishing them, there is no evidence submitted to the jury which reasonably establishes that petitioner directed Hill and Dennett in their activity of obtaining and mailing out such reprints.

The petitioner has never admitted—and it was not charged in the indictment nor was there an attempt to establish by evidence—that petitioner received one dime of compensation from any foreign source whatever for his isolation activities or that he engaged in them for, or on behalf of any foreign principal. In fact, for all that appears, petitioner was an active isolationist because he believed in the advice of President Washington in his Farewell Address that the United States should remain out of Europe's quarrels and wars and because petitioner believed that the Neutrality Act should not be repealed. Further, that President Roosevelt should be upheld in his promise that American soldiers would not be sent to fight on foreign soil! In the absence of any reasonable showing to the contrary, petitioner is entitled to a presumption of good faith in such activities.

There being no reasonable evidence to the contrary, and the petitioner being entitled to the presumption that he was acting in his capacity as an American citizen as a non-interventionist, there remains but the legal question whether under Section 3 of the 1938 Act as amended by Section 2 of the 1939 Act and paragraph 11 of the supplemental registration forms the petitioner had to report these activities as the "nature of his business".

This being the legal question, why was it that the prosecution offered, and the trial court received in evidence against the petitioner so much prejudicial, incompetent, and immaterial evidence with respect to the charges contained in the indictment? And why was it that the prosecution made such attacks upon petitioner during the course of the trial, commencing with the opening statement to the jury and closing with the final arguments which we set forth, in part, in our brief in support of the application for certiorari (p. 54) and in our main brief (footnote, pp. 5-6; 10-28)?

Petitioner thinks the answer is simple. Unless the emotions of patriotism—one of the highest in the human breast—as well as the instinct for self-preservation could be aroused—classed by psychologists and sociologists as the most dominant instinct of man—there was scarcely any chance of convicting petitioner for failing to answer a paragraph 11 in three supplemental registration forms by giving a detailed statement of his activities when the words were not even used in the Question, though the entire English language was available for that purpose.

So successful were the prosecutors in the use of their appeals to the patriotic emotions and to the instincts of self-preservation of the jury of laymen that a verdict of conviction was not only obtained but it is also shown in the rulings on evidence, instructions given to the jury, and in the very heavy sentence imposed on the petitioner. The same arguments had their effect in the court below, *Viereck v. United States*, 130 Fed. (2nd) 945.

I.

There Is No Constitutional Power in the Congress for the Delegation in a Criminal Statute of Authority to an Administrative Officer to Fix a Standard, the Violation of Which Shall Constitute a Crime. The Standard Must Be Fixed in the Statute Itself.

This proposition may be accepted as a truism in the American system of government. See cases cited in our main brief (p. 42 note) and in our brief supporting the application for certiorari (pp. 31-32), including *United States* v. *George*, 228 U. S. 14; *United States* v. *Bathgate*, 220 U. S. 220; *Lanzetta* v. *New Jersey*, 306 U. S. 451; *United States* v. *Eaton*, 144 U. S. 677; *United States* v. *Chase*, 135 U. S. 255; *Caha* v. *United States*, 152 U. S. 211.

The effect of these cases is that there are no constructive crimes, or crimes by intendment in the United States. The statute itself must fix the standard of conduct in clear and unmistakable terms, the violation of which standard constitutes a crime. We are now in a global war to preserve that system of government from Totalitarianism.

The petitioner is not charged in the indictment with failing to file either an initial or supplemental registration statements. He filed all of these statements within the periods of time prescribed.

The petitioner is not charged in the indictment with perjury in giving the wrong answers in his initial and supplemental registration statements.

It is a singular fact that the remaining 18 questions or paragraphs in each of the three supplemental registration forms, which the prosecution admits the petitioner properly and fully answered—certainly no crime with respect thereto has been charged in the indictment—are paragraphs or questions stated in the form by the Secretary of State in compliance with requirements or standards fixed by the Congress in the statute—Section 2 for the initial registration statements, and amended Section 3 for the supplemental registration statements. Petitioner literally complied with the specific requirements laid down

in the statute and grouped under the 19 separate paragraphs of the registration forms, except as to this paragraph 11 which he is charged with violating.

This paragraph 11 is based on the amended Section 3(c), the entire section being exclusively applicable to supplemental registration statements. This subsection 3(c) provides for:

> "(c) A statement containing such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period."

This subsection fixes nothing; prescribes no standard. It purports to confer on the Secretary of State authority in prescribing the forms, which must call for the specific facts provided for in subsections 3(a) and 3(b), to fix the "activities of such person as agent of a foreign principal during such six months' period" as the Secretary may want concerning the details required under the Act.

The failure of Congress to itself fix and name in the statute such activities which it wanted a registrant to name in his supplemental registration statement instead of attempting to confer that authority on the Secretary of State results in the said subsection 3(c) being unconstitutional under the Fifth and Sixth Amendments to the Constitution and decisions of this Court.

There is no escape from such conclusion for the very good reasons stated by Edward Livingston in the quotation from his Works found on page 45 of our main brief, namely to abolish the rule of constructive crimes, or crimes by intendment under vague and indefinite penal laws which made possible the infamous Lord Jeffreys and makes possible the Totalitarianism of Germany and Japan.

The failure of subsection 3(c) to itself fix or name the activities which the registrant should report had the very practical effect of resulting in the trial court's rulings on the admission of evidence and the instructions to the jury about which petitioner has complained.

II.

The Secretary of State Did Not Follow the Purported Requirement of Subsection 3(c) and Fix in Either Paragraph 11 of the Supplemental Registration Form or in Paragraph 12 of the Regulations the Activities of an Agent as Agent for a Foreign Principal Which Should Be Reported Concerning Details Required Under This Act.

The requirement in paragraph 11 of the registration forms to: "Give a comprehensive statement of nature of business of registrant"—and the indictment charges in each of the Counts II, III, and V a violation of this specific paragraph and none other by omitting to report certain activities—is not the fixing by the Secretary "of the activities of such person as agent of a foreign principal" to be reported in answer to said paragraph.

The word "activities" is not even mentioned in said paragraph. That word is not used elsewhere in the entire form except in subparagraph 13(b) where the registrant is required to furnish: "Dates of commencement of activity thereunder."—meaning under the contract of employment by the foreign principal. The Secretary knew the meaning of the word "activity" and how to use it when he wanted a report with respect thereto.

The conclusion is inescapable that the Secretary did not want "activities" in answer to this Question or else the Question is one for entrapment of even as good a scholar as petitioner. The latter conclusion is not in keeping with the high character of the Secretary of State.

The prosecution's argument comes to this: That "nature of business" is synonymous with "activities" and that when the paragraph asked for "nature of business" the petitioner should have replied with a detailed statement of his "activities."

We have shown in our main brief (pp. 59-61 and 7-8) the meaning of "business" and the distinction between "business" and "activity".

"Activity" or "Activities" may mean much or little. It certainly includes going to bed at night and arising in the morning, but is that to be reported under the Government's theory of the case? It certainly includes the exercise of the mental faculties and attention to the physical requirements of the body, but are these activities to be reported? And so on *ad infinitum*.

There being no requirements in the statute as amended as to the "activities" to be reported, and the word not being mentioned in paragraphs 11 of the supplemental registration forms; that is, no standard stated, what activities are to be reported and what are to be omitted? Most certainly neither the law nor forms nor regulations attempt to supply an answer to these questions.

Is it to be left to the prosecuting attorney in his drawing of the indictment; to the trial court in his rulings on tendered evidence and in his instructions to the jury and for the jury to determine what are material activities which a registrant is to report? If so, constructive crimes are upon us and we have Totalitarianism similar to that against which we are fighting.

While subsection 3(c) of the 1938 Act as amended purported to authorize the Secretary of State to "fix" the "activities, of such person as agent of a foreign principal" to be reported in the supplemental registration statements, the Secretary did not "fix" any activities to be reported, much less the activities of such person not for his foreign principal but for himself in his individual and personal capacity. The Secretary fixed for reporting: "Comprehensive statement of nature of business of registrant".

And even if the said subsection 3(c) were constitutional—in attempting to delegate to the Secretary the authority and power to fix a standard, the violation of which should constitute a crime—the Secretary did not comply with the authorization. Thus paragraphs 11 in the supplemental registration forms find no basis whatever in the said subsection 3(c) or elsewhere in the statute and is in excess of the power attempted to be delegated therein.

It is likewise a truism in American law—where Congress makes the law—that the exercise by an administrative officer of power in excess of that delegated to him is void and of no effect, even in civil matters and much more so in a criminal statute. See *United States* v. *Symonds*, 120 U. S. 49; *United States* v. *Garlinger*, 169 U. S. 316 and generally the cases cited in the first paragraph of the discussion of this point.

Notwithstanding that this paragraph 11 was in each of the three registration statements and notwithstanding that a registrant had to use the form under the specific requirements of this Section 3 of the Act, as amended, the Government attempts to argue here—as it did in the courts below—that paragraph 12 of the regulations issued by the Secretary required the registrant in answer to this Question 11 to report all of his activities, whether or not for a foreign principal and whether or not they constituted the "nature of his business". The three counts of the indictment were drawn, and the trial court's instructions to the jury were given on such theory.

Such an argument—as well as the indictment—must fall for the reasons stated on page 44 of our main brief and on pages 46-47 of our brief in support of the petition for certiorari. We insist that said paragraph 12 of the regulations simply required agents of foreign principals to register unless their activities were exempted from registration under the terms of Section 1 of the amended statute. What activities such an agent was to report were not fixed in subsection 3(c), nor in paragraph 11 of the supplemental registration forms, nor in paragraph 12 of the regulations.

If this paragraph 12 of the regulations must be interpreted as the courts below did interpret it and as the Government insists it should be interpreted—as requiring the agent to report all of his activities, whether or not for a foreign principal—then we submit that the said paragraph 12 likewise goes far beyond subsection 3(c) or any other section or subsection of the statute as amended. In that event the regulation is void and of no effect for reasons stated above.

In fact, any such claimed requirement of paragraph 12 of the regulations would have it make a crime of omitting to report activities—a requirement which both the Congress and the President realized that it required an entirely new statute to do, resulting in the passage by the Congress and the approval by the President of the New Act of April 29, 1942 containing Section 2 providing for the reporting of all activities, requiring some five printed pages in the appendix of our printed brief in support of certiorari to contain this Section 2 of the New Act while the amended subsection 3 of the 1938 Act required but a fraction of a printed page to contain it.

The Government is welcome to either horn of the dilemma.

The argument which the prosecution makes that not to interpret the statute as they insist it should be interpreted, is not an argument for a court. Such an argument is one for the Congress, the law-making body. Such an argument was undoubtedly made or understood when Congress formulated and passed the New Act of 1942.

III.

The Penal Section 5 of the 1938 Act Does Not Make a Crime of Any Failure, Whether Wilful or Otherwise, to Comply with the Regulations and Petitioner May Not Be Convicted for an Alleged Wilful Failure to Report His Activities on His Own Behalf, and Not for Any Foreign Principal in Answer to Paragraph 11 of the Supplemental Registration Forms.

Though they were brought to their attention, both of the courts below disregarded the decisions of this court that the failure to comply with an administrative rule, regulation, or form does not constitute a crime unless the statute specifically makes it so, these cases including, among others, *United States* v. *George*, 228 U. S. 14; *United States* v. *Eaton*, 144 U. S. 677; *United States* v. *Standard Brewery*, 251 U. S. 210; *United States* v. *Grimaud*, 220 U. S. 506; and *Caha* v. *United States*, 152 U. S. 211.

See also *United States* v. *Dodson*, 268 Fed. 397; *United States* v. *Louisville & Nashville Railroad*, 166 Fed. 942; *United States* v. *Sandefuhr*, 143 Fed. 49; and *United States* v. *Butter*, 195 Fed. 657, quoting from 4 Blackstone's Commentaries, 5.

The age-old rule of law applied in these cases is to the effect that unless Congress in the statute makes a crime the violation of any rule or regulation issued by an administrative officer thereunder any indictment is invalid which charges a crime in the failure to comply with such rule or regulation. Any other conclusion would indeed make *"The Totalitarian State Against Man"* (McFadyean's translation of Couden-Hove-Kalergi, 1938) a reality here! In the case of *Caha* v. *United States, supra*, the Court quoted with approval from *United States* v. *Eaton, supra*, as follows:

> " 'It is necessary that a sufficient statutory authority should exist for declaring any act or omission a statutory offense; and we do not think that the statutory authority in the present case is sufficient. If Congress intended to make it an offense for wholesale dealers in oleomargarine to omit to keep books and render returns as required by regulations to be made by the Commissioner of Internal Revenue, it would have done so distinctly, in connection with an enactment such as that above recited. Made in section 41 of the Act of October 1, 1890.
>
> " 'Regulations prescribed by the President and by the heads of departments, under authority granted by Congress, may be regulations prescribed by law, so as lawfully to support acts done under them and in accordance with them, and may thus have, in a proper sense, the force of law; but it does not follow that a thing required by them is a thing so required by law as to make the neglect to do the thing a criminal offense in a citizen where a statute does not distinctly make the neglect in question a criminal offense.' "

This penal section 5 of the 1938 Act is quoted on page 38 of our main brief and the entire amended statute is quoted in the appendix to our brief for certiorari (pp. 63-

66). This penal section does not make a crime of omitting to comply with a regulation, or even of omitting to comply in all respects with the forms. The penal section specifically provides that a crime under the Statute shall consist of:

> (1) Wilful failure to file any statement *required to be filed under the Act*—and petitioner filed all of forms he was required to file, including the three supplemental forms which are the subject of the remaining three counts of the indictment.
>
> (2) Or in complying with the *provisions of the Act*, makes a false statement of a material fact required to be stated therein—and petitioner was not charged, nor has it been claimed that he made any false statement in his registration forms, it being admitted by the prosecuting attorney that the answer "author and journalist" to paragraphs 11 was correct so far as it went.
>
> (3) Or in complying with the *provisions of the Act*, wilfully omits to state any material fact required to be stated therein.

The conviction and sentence must rest, if at all, upon No. 3. But petitioner was specifically indicted in each of the three remaining counts for wilfully omitting to state "as a part of his business and activities" in response to paragraphs 11 of the three supplemental registration forms, the certain isolationist activities named in the said counts. Petitioner was not indicted for wilfully omitting to comply with paragraph 12 of the regulations. Petitioner insists that the indictment did not state a crime punishable under Section 5 of the 1938 Act and that the Act nowhere therein made it a crime to omit to comply with the regulations and that it nowhere therein made a crime to omit to state "as a part of his business and activities" such activities as were charged in the indictment.

Both of the courts below have struggled to meet this issue.

The trial court thought that paragraph 12 of the regulations contained the requirement that petitioner report all of his activities and that it was unnecessary to find he

engaged therein for a foreign principal (Tr. 1456), saying that:

> "Well, there would be more force to what you have said, in my judgment, if I didn't have to look at Regulation 12." (Tr. 1484.)

The Court of Appeals was not content to rely upon Regulation 12 but proceeded to judicially rewrite subsection 3(c) of the Act so as to make it support the indictment (Pt. Main Br. 44-45). But even that rewrite did not support paragraph 11 of the registration forms.

The amended Section 3 of the Act relates exclusively—and inclusively—to the contents of supplemental registration statements. Subsections 3(a) and (b) lay down specific requirements and these specific requirements are both inclusive and exclusive so far as supplemental registration statements are concerned.

Subsection 3(c) is unconstitutional as being an attempted delegation of constitutional power to an administrative officer to fix what shall constitute a crime if there be a wilful failure to comply therewith. Neither the penal section of the Act nor any other section makes such a failure to comply with a regulation or form a crime; and, to cap it all, the Secretary fixed no activities to be reported in his paragraph 11 of the form. He asked for the nature of the business of the registrant, as in the preceding question 10 of the form he had asked for "Nature of business of foreign principal, or principals". (R. 45.)

In attempting to rely upon the general purposes of the Act to sustain the charge in the indictment, the Government not only, in effect, concedes that the indictment is defective in charging a wilful omission to comply with paragraph 11 of the registration forms, but it runs head-on into at least two rules of law.

First, an alleged crime may be within the letter of a criminal statute but not within the spirit thereof and in that event this Court will not uphold a conviction thereunder. *Church of the Holy Trinity* v. *United States*, 143 U. S. 226.

But the converse of this rule is not true that a crime may be within the spirit of a statute and not within the letter thereof. The Court will not uphold such a conviction. This Court has repeatedly declared that an alleged crime must have a clear legislative basis. *Fasulo* v. *United States*, 272 U. S. 620; *United States* v. *George, supra*, *Harrison* v. *Vose*, 9 Howard, 372, 378; *United States* v. *Wiltberger*, 5 Wheat. 76, 95.

Second, it is an universal rule of statutory interpretation that the specific terms of a statute control over any general terms thereof.

Last, but not least, the passage by Congress and the approval by the President of the New Act of April 29, 1942, wherein Section 2 not only combines the subject matter of Sections 2 and 3 of the 1938 Act as amended but this Section 2 of the New Act of 1942 includes much new matter. Not only did this New Act, in Section 2, specifically provide that a registrant must give the nature of his business and state his activities for both himself and for his foreign principal and prescribe what was material to be reported, but the said New Act, in Section 4, made what seems to be ample provisions for the control of propaganda (Pet. Br. Cer. 77-79).

In view of all this, it should be concluded that the indictment failed to charge a crime against the United States and that the demurrer should have been granted as to the entire indictment.

IV.

And the Proof Does Not Sustain the Indictment.

1.

Prejudicial, incompetent and immaterial evidence offered by the prosecution and admitted by the court.

The charges in the indictment were not sustained by the following prejudicial and incompetent and immaterial evidence offered by the prosecution and admitted by the trial court over objections of the petitioner, namely:

1. That Hitler and Goebbel's photographs were on the walls of petitioner's study in New York along with numerous other photographs. (R. 142-146.)

2. *Spreading Germs of Hate*, published by petitioner in book form in 1930 and published serially in a magazine before then, describing propaganda activities of the Governments of England, France, Germany, Ireland in the United States from 1914 to about 1919. (R. 123.)

3. That petitioner protested to the editor of *Liberty* magazine against an article printed therein concerning Hitler and his maid. (R. 151-53.)

4. That Senator Lundeen had arrangements with some of his employees whereby they paid over to him a part of their monthly salary which was placed in a fund to assist in paying the expenses of the office, and which transaction was characterized as kickbacks and extortion. (R. 304-305, Tr. 1566.)

5. Reading to the jury from time to time, of extracts from petitioner's book, *Spreading Germs of Hate* (Pet. Main Br. 11-16).

6. Whether Congressman Fish had read this book (R. 133-34).

7. That petitioner had given some money to girls employed at the Capitol with which to buy candy (Tr. 556).

8. Admission in evidence of a book, *One Hundred Families that rule the British Empire*, for which petitioner had filed in 1941 an initial registration statement (R-37-41), which registration was the subject of Count IV of the indictment (R-11-15) and which Count IV had been stricken out on demurrer (R-56). This book was admitted along with other books which petitioner had published and for which he did not register, it not being shown that they were published for any foreign principal (R-257).

9. That the petitioner, in peace times, and while the Neutrality Act was in effect, and while diplomatic relations were maintained with the German government, called upon the German Embassy in Washington for data to be used in speeches by Senator Lundeen (Tr. 723-725). There was no showing that petitioner was acting as the agent of the German Embassy but on the

contrary there was evidence that petitioner acted at the request or direction of Senator Lundeen (R-276-77).

10. Questioning Congressman Fish, a Government witness, by the prosecution as to whether he agreed with a statement in petitioner's book that patriotism was the last refuge of scoundrels (R-134).

11. That a box containing papers of one of the War Debts Committees was sent by Dennett to petitioner without his consent and that he protested (R-142-143).

12. That witness Hill and Dennett had been instrumental in having Senators and Congressmen insert much isolationist material in the Congressional Record and in purchasing many reprints therefrom which Dennett had mailed out in franked envelopes, there being no showing that petitioner authorized, directed, or requested that the material be inserted in the Congressional Record, or mailed out or that petitioner furnished any part of the money to pay the cost of doing so (R-290-301).

13. That former Supreme Court Judge Daniel F. Cohalan had addressed mixed Irish and German American audiences prior to 1917 and that he was the father of Daniel F. Cohalan, Jr., petitioner's associate trial counsel (R-129-131).

14. That mailstacks in large number were brought into the court-room before the jury at the secret request of the prosecuting attorney who then requested the court to permit two witnesses to identify the mailsacks, the request being denied and the court ordering the mailsacks taken from the courtroom (R-162).

15. That the British censor at Bermuda had intercepted and removed from United States mails an envelope mailed in New York City in July 1941, addressed to a person in Lisbon, Portugal, containing another envelope addressed to Dr. Dieckhoff in Berlin and clippings from the Congressional Record of speeches or extract from speeches made in the Senate, or inserted, by Senator Rush Holt (R-206-209).

16. That the FBI witness, with the aid of large charts, believed the envelopes intercepted by the British censor at Bermuda were addressed by the same type-

writer used in writing a letter signed by the petitioner (Tr. 1037).

17. That petitioner had advised the editor of Liberty in November 1937 that Congressman Fish was willing to collaborate in writing an article urging a referendum before the United States declared war (Tr. 1346-1349).

The prosecuting attorney referred to this memorandum in his closing address that Congressman Fish saw eye to eye with petitioner, "this Nazi propagandist on the question of war referendum back in 1937. The measure that would have hamstrung us" (Tr. 1567).

Petitioner believes that all of this evidence, offered by the Government and admitted by the trial court, was highly prejudicial, immaterial, and incompetent; that it had absolutely nothing to do with the charge in the indictment that he had wilfully omitted to name the activities charged in the indictment in his answer to paragraph 11 of the three supplemental registration forms; and that the admission of such evidence constitutes reversible error. This shows the kind of abundant proof of petitioner's guilt to which the prosecution refers and the conduct of the trial for which it is responsible!

2.

Statements of the prosecuting attorneys which did not explain any proof of the charges.

These statements, culled from the proceedings, are as follows:

1. That the petitioner had been described in his book, *Spreading Germs of Hate*, as "A venom bloated toad of treason" and that the prosecutor did not care to add a single word to that description (Tr. 1588).

2. That petitioner engaged in "nefarious" activities in his home in New York City (R. 157).

3. That petitioner was a "self-proclaimed master of the insidious art of propaganda" (R-155).

4. That petitioner was the world's greatest propagandist (Tr. 1557).

5. That petitioner was being tried for propagandizing (R-154).

6. That petitioner was a little proponent of better relations between the United States and Germany, the petitioner being of small statute (R-159).

7. That petitioner was serving his "Teutonic overlords in Berlin" (Tr.).

8. That petitioner was trying to divide us and literally beat our brains out (R-159).

9. That petitioner had a long and dishonorable career (Tr. 1558).

10. That petitioner's book, *Spreading Germs of Hate* was the text of the Government and the epitaph of the defendant (Tr. 1553).

11. That petitioner's contracts with the Munich newspaper and the German Library of Information were "window dressing, fake window dressing; camouflage; the stock in trade of every propagandist" (Tr. 1558).

12. That petitioner was the agent of the Nazi party organ, the Munich newspaper (Tr. 1558) when there was absolutely no evidence before the jury to that effect.

13. That petitioner wrote that "pious clap-trap" to the representative of the German Library of information that in event of severance of relations between the United States and Germany the petitioner would not continue the contract (Tr. 1554).

14. That the court should inquire of a prospective juror who had admitted prejudice against the petitioner whether that juror could lay aside his feelings that petitioner had been "unpatriotic" and give him a fair trial (Tr. 57). The State Department had issued a press release to the effect that it was not unpatriotic for an American citizen to register as the agent of a foreign principle (Tr. 1324).

15. That petitioner was one of the three masterminds of German propaganda in the last war (R-157), which is contrary to the Government's own evidence. (Spreading Germs of Hate, p. 167) where it is stated that petitioner engaged in selling Liberty bonds, etc., after the United States entered the War for which he was commended.

16. That petitioner had "shamed and defiled his American citizenship" (Tr. 1501).

17. That petitioner was the "American apostle of the murderous lying rogues in the Wilhelmstrasse" (Tr. 1559).

18. That petitioner was "this Nazi disciple" (Tr. 1559).

19. That petitioner had "devilish cunning and daring" to put "Hitler's words into the mouth of a United States Senator" (Tr. 1564).

20. That petitioner's late friend, Senator Lundeen, was "Possibly more fool than rogue. Certainly something of both. Certain it is that those girls kicked back part of their salary to him. He called it a reserve fund. • • • Others have a shorter and uglier term for the same practice. It has been called 'extortion' (Tr. 1565-66).

21. That we "come to the Fish in question. That windy warrior who cowered in his tent while this poor unfortunate clerk took the rap for shielding him • • • that Fish of foul memory" (Tr. 1566).

22. That the opening statement of petitioner's chief trial attorney to the jury "sounds like the Gettysburg address to me, your honor" (Tr. 213).

The Government argues in its brief that many of the remarks of the prosecutor "may have been provoked in some measure by defense counsel's attempt to turn the case into a trial of the Government and his comparison of the pr e-cution with a Communist, Fascist or Nazi persecutio (P. 50). The Court is urged to read the record. It is believed that the suggestion is absolutely unfounded and that de-

fendant's counsel studiously avoided any such conduct as would give this prosecutor the excuse that he had in the cases cited in the last paragraph of the footnote on pages 54 and 55 of our main brief. After more than a week of such charges and conduct as above cited, no argument of defendant's associate counsel—as quoted on pages 50 and 51 of the Government's brief—could remove the prejudice of the jury and trial court done the petitioner by such remarks and charges of the prosecutors.

There was no word of condemnation by this prosecutor of interventionist in or out of Congress. His attacks were directed at some isolationists in Congress and in proof the Court's attention is invited to the quotations from the record at pages 14 to 20 of our Main Brief.

This is far from justice which an imaginary speaker is made to state at a banquet celebrating the centenary of 1789, as contained in an introductory essay by M. De Laveleye to *The Origin of Republican Form of Government in the United States of America* by Oscar S. Straus (1926, Putman's, pp. xxxviii to xxxix) as follows:

> "'The whole year 1789 contains a germ of Hebraism. The idea of right and social justice is an Israelitish idea. The advent of justice on this earth has been the dream of our people. To find the first source of man's rights, we must go back farther than the Reform or the Renaissance, farther back even than antiquity or the Gospel, as far back as the Bible, The Thora, and the prophets. Our rabbis, the Isaiahs and Jeremiahs, were the first revolutionists. They announced that the hills should be leveled, the valleys filled up. All modern revolutions have been the echo of that voice which reverberated in Ephriam. We were still herded in the ghetto, on our shoulders was still bound a yellow cord of infamy, when Christianity sought in our sacred writings the startling principles of its revolutions. From our Bible came the Reformation. From it came the inspirations of the poor wretches of the low countries. Puritans in England and America appropriated the language of our judges and prophets."

It is for the preservation of these principles, declared in 1776 and written into our Constitution in 1789 and its first ten Amendments, that Americans are today serving shoulder to shoulder with the descendants of men we had to defeat in order to secure these principles. Among these millions of marching Americans is a native born American, son of this petitioner (Tr. 162, 3)—this adopted American who tried to preserve peace between the land of his birth and the land of his adoption until he cancelled his agency contracts long before the Declaration of War on December 8, 1941 (R. 52-53, 90) and long before his indictment on October 8, 1941.

It seems clear that petitioner subscribes, in substance to these statements in Straus' book. (See page 73 of our Main Brief.)

3.

Compensation received by petitioner.

The prosecution attempts to make much of the fact that for approximately 18 months the petitioner received approximately $65,000 from his three foreign principals.

This sum included the $10,000 for publication of the book, One Hundred Families, etc. It also included very considerable sums which petitioner had to pay to his workers and assistants in gathering data, the exact amount not being shown though the Government had available these records in the Bureau of Internal Revenue.

In considering the balance it is not to be overlooked—as petitioner pointed out in his letter to the German Library of Information—that he was unable to write books and magazine articles during this period. This was a very important matter. If petitioner's material remained out of magazines and he published no books for any considerable length of time, his reading public would largely forget him and there would not be the demand for his work which enabled him to command large prices therefor. Such failure of a writer to write for his reading public is even worse than the failure of a lawyer to practice.

Last, but not least, the Nazi cause was an unpopular cause in the United States. Service for the Nazis would bring down on petitioner the ill will of many, even possible prosecution by his Government. Looking back over what has happened, the petitioner was underpaid instead of receiving so much—as the Government seems to believe—that he could use a considerable part to finance propaganda.

4.

Registration statements in evidence.

The Government introduced in evidence at the commencement of the trial certified photostatic copies of the registration statements and their attached contracts. They were admitted under the seal of the Department of State. No witness was called by the Government for that purpose nor was there any attempt made by the Government to explain their contents. Even the trial court did not know the contents of the papers thus placed before the jury (R-259-260). After the Government had rested its case and during the course of the petitioner's case, counsel for petitioner read from the registration statements and contracts to the jury but the harm had then been done (Tr. 1282-1305).

CONCLUSION.

The case should be reversed with directions to dismiss the indictment.

Respectfully submitted,

O. R. McGuire,
Attorney for Petitioner.

January 29, 1943.

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No. 458

In the Supreme Court of the United States

OCTOBER TERM, 1942

GEORGE SYLVESTER VIERECK, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 458

GEORGE SYLVESTER VIERECK, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (R. 320–343)[1] has not yet been reported.

JURISDICTION

The judgment of the court of appeals was entered September 21, 1942 (R. 344). The petition for a writ of certiorari was filed October 15, 1942. The jurisdiction of this Court is invoked under

[1] References to portions of the record which were printed as an appendix to the petitioner's brief in the court below are designated by R.; and references to matters appearing in the typewritten transcript by Tr.

Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rule XI of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTIONS PRESENTED

1. Whether the Act of June 8, 1938, as amended in 1939, which provided for the punishment of any political agent of a foreign principal registered with the Secretary of State who "willfully omits to state any material fact required to be stated" in his registration statement, was so indefinite as to be unconstitutional; whether the Secretary was authorized to require a disclosure of all political activities by the registrant, even though they were on his own behalf; and whether the Secretary's requirement that registrants furnish a "comprehensive statement of nature of business of registrant" called for such a disclosure.

2. Whether the United States District Court for the District of Columbia may authorize its grand jury to continue in session beyond the term of court for which it was originally impaneled to finish investigations begun but not completed during the term.

3. Whether the alleged misconduct of the prosecutor constituted reversible error.

STATUTES, RULES, AND REGULATIONS INVOLVED

The full text of the Act of June 8, 1938, c. 327 (52 Stat. 631), as amended by the Act of August 7;

1939, c. 521 (53 Stat. 1244), 22 U. S. C. 611–616, requiring the registration with the Secretary of State of agents of foreign principals, under which appellant was indicted, and the Rules and Regulations and forms issued pursuant thereto, are set forth in full in the Appendix to the petition at pp. 63–66, 82–97. The Act of April 29, 1942 (Pub. 532, c. 263, 77th Cong., 2d sess. (S. 2399)), amending the 1938 Act, is also set forth at pp. 66–82.

STATEMENT

Petitioner was convicted in the United States District Court for the District of Columbia (R. 323) upon three counts of a five-count indictment (R. 1–19)[2] charging violations of the Act of June 8, 1938, c. 327 (52 Stat. 631), as amended by the Act of August 7, 1939, c. 521 (53 Stat. 1244), 22 U. S. C. 611–616, requiring agents of foreign principals to register with the Department of State. In each of the three counts it was alleged that, in certain supplemental registration statements filed by him as agent of three German principals, petitioner knowingly and willfully failed to disclose, in response to requirement No. 11 thereof, specified material facts with reference to his political and propaganda activities. He was sentenced (R. 324–326) to imprisonment for eight months to two years and to pay a fine of $500 on each count, the

[2] A demurrer was sustained as to Counts I and IV (R. 53–56).

terms of imprisonment to run consecutively, and to pay costs. Upon appeal to the Court of Appeals for the District of Columbia, the conviction was affirmed (R. 344).

The Government's case may be summarized as follows:[3]

Petitioner's activities as a propagandist prior to last war.—Petitioner, a native of Germany, acquired American citizenship by virtue of the naturalization of his father in 1901 (R. 22). Beginning in 1907 he engaged in a literary career in this country and abroad, and became known as "the stormy petrel of American literature" (R. 168). However, "the World War diverted Mr. Viereck from poetry to politics" (R. 169), and by 1917 he had become one of Germany's foremost propagandists in this country (Gov't Ex. 12, p. 52).

In 1930 petitioner published a book entitled "Spreading Germs of Hate", which purports to be "an impartial study of war propaganda" (R. 169) and an exposé of petitioner's activities and methods during the last war (Gov't Ex. 12, p. xiii). Thus he made known that (*id.* p. 55):

[3] No error is assigned with respect to the general sufficiency of the evidence, and on this record, as was said by the court below, "none could be" (R. 320). See also Pet. 5ℓ where petitioner admits that he "engaged in some of the activities charged in the indictment." We summarize the evidence merely because an understanding of it is of value in the consideration of the points raised in the petition.

> The objective of German propaganda was three-fold: to strengthen and replenish Germany; to weaken and embarrass Germany's foes; and to keep America out of the War by spreading the truth as the Germans saw it.

To accomplish this objective petitioner engaged in a camouflaged campaign of "manipulating public opinion" (*id.* p. 11) which successfully "kept American sentiment divided even after the Lusitania and played an important part in the presidential campaign in 1916" (*id.* p. 104) and "kept America out of the war from August 1914 to April 1917" (*id.* p. 118).

In explaining the technique of a propagandist, petitioner claimed (*id.* p. 90) that "There is no safeguard which the law can create which human ingenuity cannot circumvent" for—

> It is difficult to draw a line between legitimate political agitation and propaganda. It is not always possible to determine where the one ends and the other begins. It is at times hard to distinguish between the press agent, the lawyer, the public relations counsel, the reporter, the educator, the preacher, the politician, the statesman and the propagandist (*id.* p. 10).

Petitioner further explained that "each side attempted to hide its own selfish end behind some legitimate American purpose. It has been said that patriotism is the last resort of the scoundrel.

It was the first resort of the propagandist. Every propagandist draped himself in the flag" (*id.* p. 106).

In brief, petitioner admitted that prior to America's entry into the last war, as a German propagandist he sought to mold public opinion in this country (1) through the tactic of "a propaganda wolf in sheep's clothing," posing as a friend and constituent giving to Congressmen "suggestions for resolutions" (*id.* pp. 104–105); (2) by the organization of committees which "underwent many metamorphoses and changes of name" but which "were financed from the same secret source" (*id.* p. 99); and (3) "Articles likely to prove effective weapons were reprinted as pamphlets. The smallest edition was twenty-five thousand. Some attained an edition of several hundred thousand" (*id.* p. 82).

Registration statements filed by petitioner.—On September 26, 1939, a few weeks after the present war started, petitioner filed with the State Department a registration statement required by the Foreign Agents Registration Act, as United States correspondent for the *Münchner Neueste Nachrichten,* a newspaper of Munich, Germany, under a one-year contract dated July 20, 1939, providing for compensation at the rate of $500 per month beginning August 1939 (R. 20–25). Later there was also attached to this registration statement a copy of a contract dated September

27, 1939, between the petitioner and the German Library of Information, a branch of the German Government (Tr. 110, 115, 132, 137, 144, 161, 166, 170; and see Tr. 184, 222), by the terms of which petitioner agreed for $500 per month to do editorial work in connection with "Facts in Review," a publication of the Library which eventually attained a circulation of 100,000 copies per week (R. 25–26, 48). On March 17, 1941, petitioner filed another initial registration statement to cover a contract between him and Dr. Giselher Wirsing, of the Munich newspaper, under which petitioner agreed to act as agent for publication in the United States of a book "The One Hundred Families Who Rule Great Britain," written by Wirsing and published by Verlag, Knorr and Hirth, a publishing house in Munich. Petitioner had received $10,000 to be used by him at his discretion to cover publication costs, advertising, publicity, distribution, etc. (R. 37–41).

Following the filing of the initial registration statements, at six months' intervals petitioner filed three supplemental registration statements (R. 26–34, 44–47), as required by the Act, which are the subject matter of the three counts in the indictment upon which he was convicted. These statements show that during the eighteen-month period covered by them petitioner received more than $65,000 from his German principals.

In answer to question 11, on each of the sup-

plemental statements, which called for a "comprehensive statement of nature of business of registrant," he reported "same," as previously reported—that is, "author and journalist." In none of these statements did he disclose any of his activities in the political affairs of this country. As alleged in the indictment, these activities were threefold:

1. *Petitioner's control of Flanders Hall, Inc.*—About August 3, 1940, petitioner took over control of Flanders Hall, Inc., a corporation which had published one book written by one Sigfried Hauck, the organizer of the company, and petitioner hired Hauck to work for him (Tr. 233–234, 237, 251–252, 258–259).[4]

After petitioner assumed control, Flanders Hall published nine books,[5] the manuscripts of which he

[4] Hauck testified that his work for petitioner consisted of "sharpening his pencils and hanging up the shades when he tore them down" (Tr. 237), putting into better English a book which apparently had been translated from a German book (Tr. 238–239), obtaining bids for printing publications of the German Library of Information, reading the Congressional Record each day and picking out pertinent debates, speeches, etc. (Tr. 236–240, 429–430). A great deal of the material Hauck worked on appeared ultimately in "Facts in Review" (Tr. 430–431).

[5] "Inhumanity Unlimited" (Gov't Ex. 7), "Democracy on the Nile" (Gov't Ex. 8), "It Happened Again" (Gov't Ex. 9), "The Hapless Boers" (Gov't Ex. 13), "The Slave Business" (Gov't Ex. 14), "Misadventure in Scandinavia" (Gov't Ex. 15), "The Double Cross in Palestine" (Gov't Ex. 16), "Seven Periods of Irish History" (Gov't Ex. 17), "War Against Women and Children" (Gov't Ex. 18).

furnished (Tr. 261–262, 290–292, 341), and eight others[6] (Tr. 342–343, 366–367), all of them being highly critical of British foreign policy and, more particularly, endeavoring to establish that the British Empire was built upon imperialistic despotism rather than democratic freedom. Some of the books which purported to be English translations of French or Dutch works, or as having been compiled from English sources, were in fact translations of German books published by the *Deutche Informationsstelle*, or German Information Service, of Berlin.[7] As to others, petitioner instructed Hauck to change the name of the purported author after giving him the manuscript.[8]

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[6] "Cease Firing" (Gov't Ex. 28), "Turkey Reborn" (Gov't Ex. 29), "The One Hundred Families That Rule the Empire" (Gov't Ex. 32), "What About Africa" (Gov't Ex. 34), "Children of the Slums" (Gov't Ex. 31), "The Whipping Block" (Gov't Ex. 30), "We Must Save the Republic" (Gov't Ex. 35), "The Way of the Aggressor" (Gov't Ex. 33).

[7] "Inhumanity Unlimited," which purported to be from the French of Jeanne d'Arc Dillon LaTouche, was in fact a translation of a German book, "England's Herrschaft in Indien" by Reinhard Frank, published by the *Deutche Informationsstelle* (Tr. 480–482). "Democracy on the Nile," which purported to be compiled from British sources by Sayid Halassie, Doctor of Divinity, an Ethiopian name, was in fact a translation from a German book, "England's Gewaltpolotik am Nil," by Paul Schmitz, Kairo (Tr. 482–484). "The Hapless Boers," which purported to be translated from the Dutch of Eugene Vroom, was translated from the German book "England und de Vuren," by Stephen Schroeder, published by the *Deutche Informationsstelle* (Tr. 467–476, 478–479).

[8] According to the manuscript, the author of "Misadventure in Scandinavia" was Carl Herdsen, but Viereck told

At a conference between Hauck, one Prescott Dennett, and petitioner, Dennett indicated that he thought he could do some publicity work through a number of prominent Americans, including Congressmen with whom he was familiar, to promote sales of Flanders Hall books (Tr. 346–351); and this suggestion was later carried out.[8]

Hauck also discussed with petitioner and Senator Rush Holt publication by Flanders Hall of two of Holt's manuscripts, one of which was "Who's Who Among the War Mongers" (Tr. 381–382). Hauck saw the manuscript for "Who's Who Among the War Mongers" at petitioner's apartment in New York, and it then consisted of clippings from the Congressional Record, with

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Hauck to change it to Arno Deutelmoser (Tr. 304–305). Similarly, the author's name for "War Against Women and Children" was changed at Viereck's direction from H. J. Bartone to Werner Schaeffer (Tr. 306–307).

[8] Following the conference Dennett furnished a prospectus of a publicity campaign in which he suggested the obtaining of manuscripts from Congressmen for publication, and petitioner approved of this suggestion (Tr. 353–356). In connection with or as a result of Dennett's publicity work, "The One Hundred Families That Rule the Empire" was mentioned in a radio speech by Congressman Sweeney of Ohio (Tr. 362, 365–366). Flanders Hall also published "We Must Save the Republic," by Congressman Stephen A. Day, of Illinois, after petitioner had improved the manuscript (Tr. 366–368). Hauck received a $1,000 check from the "Make Europe Pay War Debts Committee," signed by Dennett, to be used to promote the sale of Congressman Day's work (Tr. 387).

penciled words connecting them (Tr. 373–374, 1042, 1043). Later he saw the manuscript in typewritten form at Holt's home in Washington (Tr. 383). The original Holt manuscript in clipping form was thereafter intercepted by the British at Bermuda and identified by the censor as having been found inside an envelope addressed to Dr. Hans Dieckhoff, Berlin, Germany, former Ambassador to the United States, which envelope was in turn contained within an outer envelope addressed to Senhor Hoyningero Hueneros, in Lisbon, Portugal, which was an alias used by the German Embassy in Lisbon (Tr. 1048–1061). The addresses on these envelopes had been typed on the same typewriter as were three letters from petitioner to Hauck (Tr. 1036–1037, 1085).

From August until December 1940, Flanders Hall received $11,750 from petitioner, and during 1941, $10,750, or a total of $22,500, none of which was repaid, except that petitioner, acting as agent for the company and the German Library of Information, retained $4,500 from the proceeds of two sales of books which he made to the Library. "The company itself never did make any profit", but "was a losing venture right from the very start" (R. 253–257).

2. *Petitioner organizes "Make Europe Pay War Debts Committee."*—Petitioner conceived the idea of organizing a committee which was first known as the "Make Europe Pay War Debts Committee"

and, subsequently, as "Islands for War Debts Committee" (Tr. 546–547, 605). In addition to petitioner, the organizers of the committee were the late Senator Lundeen, of Minnesota, as chairman, Prescott Dennett, and Linn Gale (Tr. 546–547, 591–592, 598), and offices were established by Dennett in Washington (Tr. 548, 580). The committee carried on a vigorous program of disseminating by mail, under congressional frank, reprints of speeches by various isolationist members of Congress, and other matter inserted in the Congressional Record under their extensions of remarks (Tr. 581).[10]

Late in 1940 or early in 1941 Dennett came to see George Hill, a clerk in Congressman Fish's office and identified himself as being connected with "Make Europe Pay War Debts Committee" (Tr. 535–536). He gave Hill some material and suggested that Hill have it inserted in the Congressional Record. Hill had the article "England Expects Every American To Do His Duty" inserted in the Record under the remarks of Sena-

[10] Seven or eight people were employed "addressing franked speeches" and sending them out to thousands of names contained on mailing lists made up from Congressmen's "fan mail" (Tr. 551–554). "Who's Who in Law and Medicine," "Who's Who in the Clergy," "Who's Who in Business and Commerce," "Who's Who in Business and Industry," and "German-American Board of Trade" (Tr. 542–543, 586–588). "Mail sacks of franked speeches were coming into the office practically every day," and "at one time there were approximately thirty sacks of mail of franked speeches" in the office (Tr. 552–553).

tor D. Worth Clark (Tr. 612–613), and ordered from the Government Printing Office 85,000 copies of reprints at a cost of $373.50, which was paid by Dennett (Tr. 615–616). This procedure was repeated with numerous such articles, Hill receiving from Dennett something like $3,000 over a period of seven to eight months to purchase reprints of what was inserted in the Record (Tr. 623–624).[11]

Throughout this period, petitioner worked closely with Chairman Lundeen of the Committee (Tr. 715–716, 762, 933), and with Dennett "discussing, or going over letters and material and correspondence" (Tr. 548–549). Committee stationery, envelopes, and cards were sent to petitioner in New York; and mailing lists were prepared for him (Tr. 542–543, 546, 586–588), many of which he also furnished to Flanders Hall (Tr. 405–412, 417–418).

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[11] Dennett brought an article, "Giddy Minds and Foreign Quarrels," to Hill and said he could not get anyone else to put it in the Record. Hill had it inserted under the remarks of Senator Clark (Tr. 618) and ordered 10,000 reprints at a cost of $73.45, which was paid by Dennett (Tr. 619–621). Hill had inserted in the Record "Mrs. Lundeen Answers Walter Winchell" and ordered 25,000 reprints thereof at a cost of $55.22, which was supplied by Dennett (Tr. 625–626). He also obtained for Dennett 25,000 reprints of "Aid to England" at a cost of $47.55 (Tr. 624–625); 25,000 reprints of "No Further Without War" at $47.55 (Tr. 626); 60,000 reprints of an article in three parts entitled "You Are on Your Way to War," "Stop the March to War," and "Three Steps to War" at $196.20 (Tr. 626–628); 50,000 copies of "Mrs. Roosevelt is Mistaken" at $86.15 (Tr. 629); 28,000 copies of "Three Warnings" and 30,000 copies of "We Burned Our Fingers Once" (Tr. 630–631).

3. *Petitioner's activities on Capitol Hill.*—Throughout the period of the indictment, petitioner frequented the Senate and House Office Buildings, especially the offices of the late Senator Lundeen of Minnesota and Congressman Hamilton Fish of New York, his friend of ten or fifteen years' standing (Tr. 520, 648, 650, 670, 933). He was also friendly with the stenographers and clerks in these offices and there was testimony that "he was throwing $5 bills for them to buy candy" (Tr. 751; 556).

The record shows that Viereck wrote at least three speeches, two of them in collaboration with the German Embassy, which were delivered by Senator Lundeen, inserted in the Congressional Record, reprinted and distributed under the congressional franking privilege (Tr. 241, 726, 728–730). Thus, on March 23, 1940, petitioner called the German Embassy by telephone from Senator Lundeen's office and told them he had to have "the material for Senator Lundeen's office." After some conversation petitioner stated, "Monday will be all right" (Tr. 722–723). On Monday, March 25, 1940, a messenger from the German Embassy arrived at Senator Lundeen's office with an envelope, asked for petitioner and, when he learned that petitioner was not there at that time, left the envelope and asked that it be delivered either to petitioner or Senator Lundeen (Tr. 723–724). The envelope contained a typewritten speech

concerning the activities of the late Lord Lothian, British Ambassador to the United States, and was entitled "Lord Lothian against Lord Lothian" (Tr. 725). The speech was subsequently published by Flanders Hall in pamphlet form after further revisions by petitioner (Tr. 239–240, 243–246, 765–767, 941), and advertised as containing "The most powerful arguments * * * against spilling the blood of our sons * * * on European battlefields" (Tr. 324).

On another occasion during March 1940, in Senator Lundeen's office, petitioner dictated the outline for a speech entitled, "German-American Trade Relations" (Tr. 936–937). After petitioner and Senator Lundeen went over this outline, petitioner had the German Embassy send to the senator's office the necessary material to fill in the outline (Tr. 938–939). Senator Lundeen did not use the material collected by one of his clerks, saying that petitioner had better material (Tr. 778–779).

In July 1940 Senator Lundeen called George Hill in the office of Representative Hamilton Fish by telephone and mentioned that he was going to make a speech concerning the activities of six important men involving the United States in war, and talked about having copies of it mailed out. Petitioner was there and also talked to Hill about mailing out copies of the speech (Tr. 768–772). At 6:30 that evening, in Senator Lun-

deen's office, the Senator and petitioner were working on a draft of this speech—"Six Men and War"—and petitioner stated, "I have tried to phrase it in the best way I could in the manner in which you speak." At 10:30 that night they were still working on it together in the Senator's office (Tr. 773–775).

At or about this time Representative Fish told Hill that petitioner wanted to mail out some speeches of Senator Lundeen and also told him to send them out to the mailing list of The National Committee to Keep America Out of Foreign Wars, of which Congressman Fish was the chairman (Tr. 519–520, 648, 649–650). Petitioner informed Hill that he wanted to send out 125,000 copies of Senator Lundeen's speech "Six Men and War" and told Hill to contact Senator Lundeen for all of the details including payment. When petitioner learned that the Committee's mailing list had 100,000 names he asked Hill for a copy and gave Hill two $50 bills as a "tip" for it (Tr. 521–523). Petitioner then asked Hill if he had any other lists. Hill replied that he did not, but agreed at petitioner's request to make up a list of "Who's Who in America". Upon delivery of this list, petitioner gave Hill another "tip" of two $50 bills for it (Tr. 521–523, 530). Subsequently, 125,000 copies of the speech "Six Men and War" were mailed out by Hill for petitioner under Senator Lundeen's frank and the Senator paid Hill for them (Tr. 523–527, 607–608).

ARGUMENT

I

Petitioner contends that Section 5 of the Act of June 8, 1938 (Pet. 66), for the violation of which he was indicted, lacked the definiteness and certainty constitutionally required to support his conviction (Pet. 40–49). Petitioner concedes, however, that the Act of April 29, 1942 (Pet. 66–82), "meets the constitutional and other defects" which he finds in the earlier Act (Pet. 30, 46–47, 60); hence, it is clear that his contention, which concerns only his own case, presents no question of general importance requiring review by this Court.

Petitioner's position appears to be that the "material" facts which a foreign agent was required to state in a registration certificate and for the omission of which he was punishable if the omission was willful, were nowhere specified in the Act or in the Secretary's regulations and forms. More specifically, his claim is that since the case was submitted to the jury on the theory that Section 5 [12] (Pet. 66) permitted his conviction and punishment even if the activities which he failed

[12] Section 5, so far as pertinent, provides that "Any person who * * * willfully omits to state any material fact required to be stated therein [in any statement required to be filed under the Act] shall, on conviction thereof, be punished by a fine of not more than $1,000 or imprisonment for not more than two years, or both."

to disclose were activities on his own behalf rather than as agent for a foreign principal (R. 99–100, 101, 110), the Act and the regulations were not specific enough to advise him that omission to state such activities was penalizable.[13]

We submit that the court below correctly held that this contention is without merit. As is apparent from the synopsis of the Act appearing in the opinion below (R. 321–322, 323), there can be no doubt that the purpose of the Act was to require every agent of a foreign principal who disseminated political propaganda in this country

[13] The court below (R. 334–335) adequately disposed of petitioner's suggestion that Section 2 of the 1942 Act which expressly defines the material facts to be disclosed, supplies a *casus omissus* in the earlier Act. The legislative history of the 1942 amendment shows that Section 2 "is merely declaratory with respect to the requirements of the registration statement of foreign agents as now prescribed or may be prescribed by the Secretary of State under section 2 of the existing statute." S. Rep. 913, 77th Cong., 1st Sess., p. 11. Indeed, it may be said that requirement 11 of the registration form received the approval of Congress by its failure to change the Act of June 8, 1938, in any pertinent respect in the amendment of August 7, 1939. Cf. *United States* v. *Dakota-Montana Oil Co.*, 288 U. S. 459, 466; *Johnson* v. *Manhattan Ry. Co.*, 289 U. S. 479, 500; *Brewster* v. *Gage*, 280 U. S. 327, 337; *United States* v. *Hines*, 70 App. D. C. 36, 41, 103 F. (2d) 737, 742; *Guaranty Trust Co.* v. *Commissioner of Internal Revenue*, 79 F. (2d) 245, 246 (C. C. A. 2); *Allen* v. *Morsman*, 46 F. (2d) 891, 894 (C. C. A. 8); *The Habana*, 63 F. (2d) 812, 813 (C. C. A. 2). And, in any event, the interpretation of the statute under which the indictment was drawn is a judicial function. *United States* v. *Stafoff*, 260 U. S. 477, 480.

to register and disclose *all* of his political activities on behalf of his foreign employer."[14] But such a measure, concerned as it was with the dis-

[14] The legislative history clearly supports this purpose. A special committee was appointed by the House of Representatives to conduct "an investigation of (1) the extent, character, and objects of Nazi propaganda activities in the United States, [and] (2) the diffusion within the United States of subversive propaganda that is instigated from foreign countries * * *" (H. Res. 198, 73d Cong., 2d Sess.). After nine months of investigation, the Committee reported that "this country has been flooded with propaganda material" from various alien organizations outside the United States, which were "engaged in vicious and un-American propaganda activities" for the purpose of gaining "adherents" and "to influence the political opinions of many of our people," and also to "influence, if necessary and possible, our governmental policies." It further found that "all kinds of efforts and influence, short of violence and force, were used to obtain its desired objective, which was to consolidate persons * * * into one group, subject to dictation from abroad" (H. Rep. 153, 74th Cong., 1st Sess., pp. 1, 4, 5, 7, 8, 9, 22). The evils arising from Nazi employment of ostensibly legitimate business connections as a "smoke screen" for propaganda activities was called forcibly to the attention of Congress in unequivocal terms. The Committee "found indisputable evidence to show that certain German consuls in this country, with all the appurtenances of diplomatic immunity, violated the pledge and proprieties of diplomatic status and engaged in vicious and un-American propaganda activities, paying for it in cash, in the hope that it could not be traced." The evidence before the committee showed that petitioner participated in "one of the transactions in question", which involved "the German Embassy itself", and that petitioner "received $1,750 per month with free office space * * * as his share of the $6,000" monthly profit made by his principal, Carl Byoir & Associates. Petitioner also testified before the committee "that he had also been paid the sum of $500 monthly 'for 4 or 5 months' by Dr.

closure of propaganda, would, indeed, have been a halfway one had it not required or, at least, authorized the Secretary to require the registrant to reveal the propaganda he put out on his own as well as the propaganda he put out as an agent. "Otherwise," as was said by the court below (R. 324), "it could not be known in which of his dual capacities a registrant was acting."

Kiep, former German consul-general in New York City, which was paid in cash for advice of a propaganda nature" (*id.*, pp. 5–6).

"As a result of" the Committee's recommendations, a bill (H. R. 1591, 75th Cong., 1st Sess.), which subsequently became the Act under which appellant was indicted (Act of June 8, 1938, c. 327, 52 Stat. 631), was introduced at the next session of Congress "to require all persons who are in the United States for political propaganda purposes—propaganda aimed toward establishing in the United States a foreign system of government, or group action of a nature foreign to our institutions of government, or for any other purpose of a political propaganda nature—to register with the State Department and to supply information about their political propaganda activities, their employers, and the terms of their contracts." The required registration was intended to "publicize the nature of subversive or other similar activities of such foreign propagandists, so that the American people may know those who are engaged in this country by foreign agencies to spread * * *. propaganda for the purpose of influencing American public opinion on a political question." Congress was advised that "propaganda efforts of such a nature are usually conducted in secrecy, which is essential to the success of these activities," and that the "spotlight of pitiless publicity" would "serve as a deterrent to the spread of pernicious propaganda," and believed that the passage of the bill would "force propaganda agents representing foreign agencies to come out 'in the open' in their activities" or subject themselves to the penalties provided (H. Rep. 1381, 75th Cong., 1st Sess., pp. 2–3).

By setting up an ostensibly legitimate business connection every registrant could have scoffed at the law and could have engaged unrestrictedly in furthering, by the spreading of propaganda, the objectives of his foreign principal.[15] The court below found (R. 324) on the face of the statute, in Section 3 (c) (Pet. 65),[16] express authority for the Secretary to require the disclosure by a registrant not only of his political activities on behalf of the foreign principal but also the political activities in which he participated on his own behalf. We do not feel that it is necessary to rest upon this section alone as the basis for affording authority to the Secretary to require the disclosure of all political activity of the foreign-paid propagandist. The manifest aim of the statute to require revelation of the source which nurtured foreign propaganda must be con-

[15] As petitioner himself described it in his book "Spreading Germs of Hate" (R. 124), "Propaganda is a campaign camouflaging its origin, its motive, or both, conducted for the purpose of obtaining a specific objective by manipulating public opinion." And as he further wrote (R. 125), "The objective of German propaganda [during the World War] was threefold—to strengthen and replenish Germany, to weaken and embarrass Germany's foes, and third, to keep America out of the War by spreading the truth as Germany saw it."

[16] This dealt with the supplementary registration upon which the indictment is based. It provided that there should be in the supplementary registration statement, "A statement containing such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period."

sidered in conjunction with Section 6, providing that "The Secretary is authorized and directed to prescribe such rules, regulations, and forms as may be necessary to carry out this Act." Certainly, to use the language of the court below (R. 324), "In view of the logical necessity of knowing all of an agent's political activities, either as an agent or on his own and in view of the fact that 'carry out' must mean 'make workable', it appears that the Act authorizes the Secretary to require the full disclosure."

We think that the Secretary's regulations were sufficiently definite to inform the petitioner that a full disclosure of all of his political activities was required. Paragraph (12) of Chapter IV of the regulations provided that "Agents of foreign principals who engage, *whether or not on behalf of their foreign principal*, in activities not included among the exceptions set forth in the act and regulations shall be considered subject to the requirement of registration." [Italics supplied.] Since an agent of a foreign principal who engages in political activities on behalf of that principal was specifically required by the Act to register, the paragraph was certainly not needed for the purpose of identifying those who should register. Obviously, therefore, the important clause in the paragraph was that which stated that the agent should register whether or not the activities were on behalf of the foreign principal. "Be-

ing subject to the requirement of registration," regardless of whether his activities are on behalf of the foreign principal, as the court below said (R. 325), consequently "must mean not only the act of registering but also all the duties and concomitants of registration." Certainly the clause sufficiently put the registrant on notice that he might be called upon to reveal his activities whether or not they were on behalf of his principal.

Interpreted in this light, we think that requirement 11 of the form prescribed by the Secretary for registration sufficiently advised the registrant that he was required to disclose all of his political activities, even if they were engaged in on his own behalf. Leaving out of consideration for the moment the 11th requirement, the forms (Pet. 88–90, 95–97) disclose that a registrant who truthfully complied with all of the other listed requirements would have made a complete disclosure of the details of the principal-agent relationship and of the nature of the foreign principal's business. Thus, Item 10 required the registrant to reveal the "Nature of business of foreign principal or principals" (Pet. 88, 95). But, to use the language of the court below (R. 325), "In Item 11 attention is focused upon the registrant and the scope of the statement is enlarged." The registrant was required to make a "Comprehensive statement of nature of business

of registrant." Certainly, confronted with such a registration blank a registrant who certified, as he had to, that he had read the Act "and the regulations issued pursuant thereto" including, of course, Paragraph (12) of Chapter IV, and that he was familiar with the contents of the registration statement (Pet. 90–97), had sufficiently been made aware that when he filled in the 11th item he should fully and in detail, as a paid political propagandist, set forth not only the activities of that nature which he had engaged in for his foreign principal but also the similar activities which he had carried on for himself. Moreover, as the court below stated (R. 326), the form allotted eight and one-half blank lines for an answer to Item 11, and the registrant was advised that "Where space in the registration statement form does not permit full answers to questions, the information required may be set forth in supplementary papers incorporated by reference in the registration statement and submitted therewith" (Pet. 88, 91, Par. (4), 94, Par. (2)).[17]

Patently, political and propaganda activities such as those which the indictment charged and the proof established that petitioner engaged in,

[17] Since petitioner, as a registrant under the Act, was required to report his propaganda activities whether as agent or otherwise, petitioner's argument (Pet. 56) that the court should have refused the Government's prayers Nos. 2, 2A, and 8 to that effect, and granted his prayer No. 19 to the contrary, is without any tenable basis.

without reporting, during the periods covered by the supplementary registration statements were not adequately described by petitioner when, in response to Item 11, he characterized his business merely as that of "author and journalist." There can be no doubt that this political and propaganda activity was a part of petitioner's business and that it was such regardless of whether it was his business as an agent or his own business.

Furthermore, it should be noted that the sanctions of the statute were not applicable unless the registrant "willfully" omitted to state a material fact. The jury was not only advised that petitioner was required to disclose all of his political activities, whether they were on behalf of his foreign principal or not (Tr. 1601), but that the jury must find that petitioner knew that he was obliged to make such a disclosure and "had the deliberate intention of avoiding the requirements of the statute" (Tr. 1594–1595).[18] Where scienter must first be proved before the penalties of a statute may be applied, there is no real basis for an attack upon the statute based on vagueness. *United States* v. *Ragen*, 314 U. S. 513, 524; *Gorin*

[18] Since, as we have shown, the petitioner was required to report his activities as a propagandist, his contention that he was indicted for something which was not made a crime by the Act of June 8, 1938 (Pet. 58–60), requires no further discussion. Similarly, it is obvious that he was not tried for "being a propagandist," as he contends, but rather because, as required by law, he wilfully omitted to disclose such activity (Pet. 60–61).

v. *United States*, 312 U. S. 19, 27–28; *Hygrade Provision Co.* v. *Sherman*, 266 U. S. 497, 501; *Omaechevarria* v. *Idaho*, 246 U. S. 343, 348.[19]

In *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, and cases of that nature, relied upon by petitioner, the statute which was held to be too vague and indefinite was not implemented by regulations as in the instant case. A statute which might otherwise be indefinite will not be held to be invalid if it receives administrative or judicial refinement before it is applied. *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77, 81–82; *Miller* v. *Schoene*, 276 U. S. 272, 281; *Kay* v. *United States*, 303 U. S. 1, 9; *Neblett* v. *Carpenter*, 305 U. S. 297, 302–303; see *Smith* v. *Cahoon*, 283 U. S. 553, 565; *Champlin Refining Co.* v. *Commission*, 286 U. S. 210, 242; *Small Co.* v. *American Sugar Ref. Co.*, 267 U. S. 233, 239; cf. *Bandini Co.* v. *Superior Court*, 284 U. S. 8, 18; *Old Dearborn Co.* v. *Seagram Corp.*, 299 U. S. 183, 196.

II

Petitioner for the first time advances the contention that the indictment is a nullity because the district court had no power to authorize the grand jury to continue to function after expiration of

[19] See also Briefs for the Government in *United States* v. *Ragen*, Nos. 54–56, October Term, 1941, pp. 24–28, and in *Gorin* v. *United States*, Nos. 87–88, October Term, 1940, pp. 65–86, especially pp. 83–86, where the applicable principles are discussed, and the authorities collected.

the term for which it was originally impaneled (Pet. 35–40). Pretermitting the question whether this contention may properly be raised for the first time on petition for a writ of certiorari (cf. *Rodriguez* v. *United States*, 198 U. S. 156, 164–165; *Agnew* v. *United States*, 165 U. S. 36, 44; *Caha* v. *United States*, 152 U. S. 211, 221; *Powers* v. *United States*, 223 U. S. 303, 312), it is clear that it presents only a question of local law, and, in any event, is without merit.

The indictment recites (R. 1) that the grand jury was impaneled for the July 1941 term of court and began but did not finish, in that term, investigation of the matters charged in the indictment; that pursuant to Section 284 of the Judicial Code, as amended,[20] it was authorized to continue to sit during the succeeding, or October 1941 term, "to finish investigations begun but not finished in the July 1941" term. Petitioner argues, however, that Section 284 is inapplicable and that the procedure required to be followed by the trial court is controlled by statutes exclusively applicable to the District of Columbia. More particularly he con-

[20] Section 284 of the Judicial Code, as amended (28 U. S. C. 421), provides, in part:

"* * * A district judge may, upon request of the district attorney or of the grand jury or on his own motion, by order authorize any grand jury to continue to sit during the term succeeding the term at which such request is made, solely to finish investigations begun but not finished by such grand jury, but no grand jury shall be permitted to sit in all during more than eighteen months * * *."

tends that the extension of the term of the grand jury in this case was in violation of Section 1406, Title 11, of the District of Columbia Code (Act of April 19, 1920, c. 153, 41 Stat. 559), which provides that:

> The term of service of the grand jury in the criminal court shall begin with each term of that court and shall end with such term, unless the jury shall be sooner discharged by the court. * * *

We submit, however, that this provision, which appears to be nothing more than a codification of the common law rule as to grand jury terms (cf. *Jones* v. *United States*, 162 Fed. 417, 421 (C. C. A. 9), certiorari denied, 212 U. S. 576), should not be construed to prohibit extension of the term of the grand jury to finish investigations begun but not completed during the term for which it was originally summoned. It merely requires that the grand jury must serve during the entire term of court, unless sooner discharged, thus relieving the court from summoning a new grand jury when the one originally impaneled has discontinued its sessions prior to expiration of the term. Adoption of the construction urged by petitioner would produce absurd results, making it impossible in the District of Columbia to obtain an indictment in a case, such as the present one, requiring a lengthy investigation.[21]

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[21] Section 104, Title 23, D. C. Code (Act of March 3, 1901, 31 Stat. 1342, c. 854, sec. 939), lends no support to peti-

III

Petitioner contends (Pet. 52–56) that he was prejudiced by alleged inflammatory remarks made by the prosecutor during the trial and in his closing argument to the jury and by his action in bringing into the courtroom a number of mail bags containing franked speeches (Tr. 663–664, 701–708).[22] As the trial judge (Tr. 1590–1591) and the court below (R. 341) pointed out, objections to the alleged inflammatory remarks were made too late to correct any wrong inference by timely explanation. Cf. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 239. With reference to the mail-bag incident, which the opinion below characterized as "unnecessary stage business," it seems obvious that the court correctly held that "the ends of justice would not be served * * * by reversing on instances of improper action like this * * *" (R. 341).[23] Cf. *United States* v.

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tioner's contention. It does not relate to the term of service of a grand jury, but merely provides for enlargement of time within which a person may be held in jail or on bail pending action of the grand jury.

[22] Much of petitioner's argument under this head consists of complaints against the admission of evidence which was damaging to his defense (Pet. 53–54, 57–58), but, as the court below observed (R. 341), petitioner "has not seen fit to stand on the inadmissibility of the evidence."

[23] Petitioner assigns as error, but does not argue, the trial court's action in referring to the legislative history of the statute during his general charge to the jury (Pet. 29) and in excluding one of petitioner's trial counsel from further

Socony-Vacuum Oil Co., supra; Shushan v. *United States*, 117 F. (2d) 110, 116 (C. C. A. 5), certiorari denied, 313 U. S. 574.

CONCLUSION

The case was correctly decided below, and there is involved no question requiring further review by this Court. We, therefore, respectfully submit that the petition for a writ of certiorari should be denied.

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NOVEMBER 1942.

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participation in the case after the defense had rested its case (Pet. 33–34). These contentions were adequately disposed of by the court below (see R. 335–336 and 339–340). Similarly he questions (Pet. 9, 29, 34), but does not argue, the propriety of the imposition of costs by the trial court. The court below devoted the last two pages of its opinion to a full consideration of this question (R. 342–343), and we can only add to what was there said that this Court denied certiorari (242 U. S. 633) in the *Oates* case (*Oates* v. *United States*, 233 Fed. 201 (C. C. A. 4)) and the point was there raised in the petition (No. 688, October Term, 1916).

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No. 458

In the Supreme Court of the United States

OCTOBER TERM, 1942

GEORGE SYLVESTER VIERECK, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The opinion of the court of appeals (R. 329–352)[1] is reported at 130 F. (2d) 945.

JURISDICTION

The judgment of the court of appeals was entered September 21, 1942 (R. 353). The petition for a writ of certiorari was filed October 15, 1942 and was granted November 16, 1942. The jurisdiction of this Court is conferred by Section 240

[1] References to portions of the record which were printed as an appendix to the petitioner's brief in the court below are designated by R.; and references to matters appearing in the typewritten transcript by Tr.

(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the Act of June 8, 1938, as amended in 1939, which provided for the punishment of any political agent of a foreign principal registered with the Secretary of State who "willfully omits to state any material fact required to be stated" in his registration statement, was so indefinite as to be unconstitutional; whether the Secretary's requirement by regulation that registrants furnish a "comprehensive statement of nature of business of registrant" called for a disclosure of all political activities by the registrant, even though they were on his own behalf; and whether the Secretary was authorized to require such full disclosure.

2. Whether the indictment alleges an offense; and whether the alleged misconduct of the prosecutor constituted reversible error.

STATUTES, RULES, AND REGULATIONS INVOLVED

The full text of the Act of June 8, 1938, c. 327 (52 Stat. 631), as amended by the Act of August 7, 1939, c. 521 (53 Stat. 1244), 22 U. S. C. 611–616, requiring the registration with the Secretary of State of agents of foreign principals, under which appellant was indicted, and the Rules and Regulations and forms issued pursuant thereto, are set forth in full in the Appendices A and B, separately printed, at pp. 1–18. Pertinent provisions of the Act of April 29, 1942 (Pub. 532, c. 263, 77th Cong.,

2d sess. (S. 2399)), amending the 1938 Act, are also set forth in Appendix A, at p. 5.

STATEMENT

Petitioner was convicted in the United States District Court for the District of Columbia (R. 323) on Counts II, III and V of a five-count indictment (R. 1–19) [2] charging violations of the Act of June 8, 1938, c. 327 (52 Stat. 631), as amended by the Act of August 7, 1939, c. 521 (53 Stat. 1244), 22 U. S. C. 611–616, requiring agents of foreign principals to register with the Department of State. He was sentenced (R. 324–326) to imprisonment for eight months to two years and to pay a fine of $500 on each count, the terms of imprisonment to run consecutively, and to pay costs.[3] Upon appeal to the United States Court of Appeals for the District of Columbia, the conviction was unanimously affirmed (R. 353).

It was alleged in Count II of the indictment (R. 5–7) that in a supplemental registration statement filed on April 23, 1940, as agent of two German principals, petitioner knowingly and willfully

[2] A demurrer was sustained as to Counts I and IV (R. 53–56).

[3] Petitioner assigns as error the imposition of costs (Br. 36, 69–72). As the court below held (R. 351–352), however, the assessment of costs was authorized by the Act of May 8, 1792, c. 36 (1 Stat. 277), 28 U. S. C. 822. Petitioner's contention that this statute was superseded by the specific penalty provision of the Foreign Agents Registration Act, is answered in *Oates* v. *United States*, 233 Fed. 201, 207 (C. C. A. 4), certiorari denied, 242 U. S. 633.

failed to disclose, in response to item No. 11, which called for a "Comprehensive statement of nature of business of registrant," that during the period covered by the statement and in respect of matters pertaining to political interest, public relations, and public policy, he, in substance, advised, consulted and informed divers persons; placed and disseminated within the United States certain oral and written information and matter for publication, by writing, editing, preparing and revising speeches, public addresses and written matter which were thereafter printed and published in whole or in part in books, periodicals and newspapers and in the Congressional Record and which were also disseminated by means of radio broadcasts; aided and assisted one Prescott Dennett and others in organizing and financing the "Make Europe Pay War Debts Committee" for the purpose of disseminating oral and written matter designed to influence, persuade, bend, and mold American public opinion.

Count III (R. 7–11) alleged, in respect of the supplemental registration statement of October 25, 1940, the willful failure to disclose substantially the same material facts as those covered by Count II and in addition charged that petitioner, in substance: through the medium of the "Make Europe Pay War Debts Committee" disseminated and distributed by mail under congressional franking privilege and otherwise, speeches and public addresses delivered on the floor of Congress and

elsewhere by present and former members of Congress, to influence, persuade, bend and mold American public opinion; through the medium of a publishing house known as "Flanders Hall, Inc.," a New Jersey corporation, which was financed, controlled and directed by him, published, sold and distributed certain books and pamphlets, some of which were based on translations from publications issued by the German Information Service in Berlin.

Count V (R. 15–19) alleged that in respect of the supplemental registration statement of April 25, 1941, petitioner willfully failed to disclose material facts substantially the same as those covered by Counts II and III.

The Government's case may be summarized as follows:

Petitioner's activities as a propagandist prior to last war.—As bearing on petitioner's intentional failure to disclose the activities in question, certain evidence regarding his earlier methods in the field of political propaganda on behalf of Germany was introduced, as drawn from his own writing. Petitioner, a native of Germany, acquired American citizenship by virtue of the naturalization of his father in 1901 (R. 22). Beginning in 1907 he engaged in a literary career in this country and abroad (R. 168). However, "the World War diverted Mr. Viereck from poetry to politics" (R. 169), and by 1917 he had become one of Germany's foremost propagandists in this country (Gov't Ex.

12, p. 52). Writing of himself, petitioner stated: "He held, so to speak, the German-American portfolio in the propaganda cabinet. He shared with the late William Bayard Hale the portfolio of publicity. It was Viereck who advised the retention of Dr. Hale" (ibid.)

In 1930 petitioner published a book "Spreading Germs of Hate" which purports to be "an impartial study of war propaganda" (R. 169) and an exposé of petitioner's activities and methods during the last war (Gov't Ex. 12, p. xiii). Thus he made known that (*id.*, p. 55): "The objective of German propaganda was threefold: to strengthen and replenish Germany; to weaken and embarrass Germany's foes; and to keep America out of the War by spreading the truth as the Germans saw it." To accomplish this objective petitioner engaged in a camouflaged campaign of "manipulating public opinion" (*id.*, p. 11) which successfully "kept American sentiment divided, even after the Lusitania, and played an important part in the presidential campaign in 1916" (*id.*, p. 104) and kept "America out of the war from August, 1914 to April, 1917" (*id.*, p. 118).

In describing the technique of a propagandist, petitioner explained:

> * * * While the law requires that the ownership of a newspaper must be fully disclosed, there was nothing to prevent the German Government or an individual German from making a present of several

> million dollars to an American sympathizer; nor was there anything to prevent the sympathizer from making this money talk—for Germany! There is no safeguard which the law can create which human ingenuity cannot circumvent (*id.*, p. 90).

He also stated:

> It is difficult to draw a line between legitimate political agitation and propaganda. It is not always possible to determine where the one ends and the other begins. It is at times hard to distinguish between the press agent, the lawyer, the public relations counsel, the reporter, the educator, the preacher, the politician, the statesman, and the propagandist (*id.*, p. 10).

Petitioner further explained that "Each side attempted to hide its own selfish end behind some legitimate American purpose. It has been said that patriotism is the last resort of the scoundrel. It was the first resort of the propagandist. Every propagandist draped himself in the flag" (*id.*, p. 106).

In brief, petitioner showed that prior to America's entry into the last war, German propaganda, which he in good measure directed, sought to mold public opinion in this country (1) by utilizing the "propaganda wolf in sheep's clothing" who posing as "friends and constituents" gave to Congressmen "suggestions for resolutions" (*id.*, pp. 104–105); (2) by the organization of committees which "underwent many metamorphoses and c h a n g e s of

name" but which "were financed from the same secret source" (*id.*, p. 99); and (3) "Articles likely to prove effective weapons were reprinted as pamphlets. The smallest edition was twenty-five thousand. Some attained an addition of several hundred thousand" (*id.*, p. 82).

Registration statements filed by petitioner.—On September 26, 1939, a few weeks after the present war in Europe started, petitioner filed with the State Department a registration statement required by the Foreign Agents Registration Act, as United States correspondent for the *Münchner Neueste Nachrichten*, a newspaper of Munich, Germany, under a one-year contract dated July 20, 1939, providing for compensation at the rate of $500 per month beginning August 1939 (R. 20–25). Later there was also attached to this registration statement a copy of a contract dated September 27, 1939, between the petitioner and the German Library of Information, a branch of the German Government (Tr. 110, 115, 132, 137, 144, 161, 166, 170; and see Tr. 184, 222), by the terms of which petitioner agreed for $500 per month to do editorial work in connection with "Facts in Review," a publication of the Library which eventually attained a circulation of 100,000 copies per week (R. 25–26, 48). On March 17, 1941, petitioner filed another initial registration statement to cover a contract between him and Dr. Giselher Wirsing, of the Munich newspaper, under which petitioner agreed to act as agent for publication in the United States of a book, "The One Hundred Families Who Rule

Great Britain," written by Wirsing and published by Verlag, Knorr and Hirth, a publishing house in Munich. Petitioner had received $10,000 to be used by him at his discretion to cover publication costs, advertising, publicity, distribution, etc. (R. 37–41.)

At six months' intervals after the first registration statement was filed, petitioner filed three supplemental registration statements, as required by the Act, and which are the subject matter of the three counts in the indictment upon which he was convicted. In the first one, filed on April 23, 1940 (R. 26–29), petitioner stated that during the six months' period he had received $3,500 from the newspapers and $3,650 [corrected to $3,150; see R. 34–35] from the German Library of Information, plus extras in the amount of $1,200. In the second supplemental registration statement, filed on October 25, 1940 (R. 30–34), he admitted that he had received $3,000 from the Munich newspaper, $3,000 from the German Library of Information, and $7,650 for extras for editorial editing, supervising and writing prefaces.

In the third supplemental statement, filed April 25, 1941 (R. 44–47), petitioner reported that there was no change in his status except that he had executed a new contract with the German Library of Information under which he was to receive $2,500 per month; and that during the six months covered by the statement he had received $8,300 from the Munich newspaper (which included payments in

advance to February 1942), $25,504.09 from the German Library of Information, and $10,000 as previously reported on March 17, 1941, from Wirsing in connection with the publication of "The One Hundred Families."

Thus, during the eighteen-month period covered by the three supplemental registration statements appellant received more than $65,000 from his German principals.

In answer to question 11 on each of the supplemental statements, which called for a "comprehensive statement of nature of business of registrant," he reported "same," as previously reported—that is, "author and journalist." (R. 21, 28, 31, 45.)[4] In none of these statements did he disclose any of his activities in the political affairs of this country. As alleged in the indictment, these activities, which followed closely the pattern of petitioner's activities prior to the last war (see pp. 5–8, *supra*), were threefold:

1. *Petitioner's control of Flanders Hall, Inc.*—In 1939 one Sigfried Hauck, who had written a book, "The Scarlet Finger," formed a corporation, Flanders Hall, Inc., which had published "just the one" book (Tr. 233–234). A copy of the book was sent to petitioner, who wrote the author a "flattering letter praising the book,"

[4] "Same" in the last-cited statement may be taken to refer to "Author, Editor and Publicist" in the statement of March 17, 1941 (R. 38), the subject of the dismissed Count IV.

although it was not well received generally (Tr. 234, 235). Thereafter, in March 1940, Hauck went to work for petitioner "sharpening his pencils, and hanging up the shades when he tore them down" (Tr. 237), putting into better English a book which apparently had been translated from a German book (Tr. 238–239), obtaining bids for printing publications of the German Library of Information, reading the Congressional Record each day and picking out pertinent debates, speeches, etc. (Tr. 236–240, 429–430). A great deal of the material Hauck worked on appeared ultimately in "Facts in Review" (Tr. 430–431).

Finally, petitioner decided to take over Flanders Hall "without change of officers or stock or anything" (Tr. 251–252) and, by a letter dated August 3, 1940, confirmed an oral agreement he had made with Hauck which provided that Flanders Hall would publish books and pamphlets from manuscripts furnished by petitioner; that petitioner would advance the necessary money for this purpose; that Flanders Hall would repay petitioner out of money received from the sale of the books before any other charge was paid; that all moneys advanced by petitioner would be returned to him before Flanders Hall could make any profit on the sale of the books; that Flanders Hall would make no disbursements without petitioner's written consent and would furnish him weekly with a statement of expenses; that petitioner's representatives would have access to the books at any time; that

Flanders Hall would not incur any liabilities on behalf of the company without petitioner's knowledge and consent; and that petitioner would have an option to purchase two-thirds of Flanders Hall's outstanding capital stock for not more than $500 (Tr. 257–259).

After this contract was agreed upon, Flanders Hall published nine books,[5] the manuscripts of which were furnished by petitioner (Tr. 261–262, 290–292, 341), and eight others[6] (Tr. 342–343, 366–367), all of them being highly critical of British foreign and colonial policy. Some of the books which purported to be English translations of French or Dutch works, or as having been compiled from English sources, were in fact translations of German books published by the *Deutche Informationsstelle*, or German Information Service, of Berlin.[7] As to others, petitioner instructed Hauck

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[5] Inhumanity Unlimited (Gov't Ex. 7), Democracy on the Nile (Gov't Ex. 8), It Happened Again (Gov't Ex. 9), The Hapless Boers (Gov't Ex. 13), The Slave Business (Gov't Ex. 14), Misadventure in Scandinavia (Gov't Ex. 15), The Double Cross in Palestine (Gov't Ex. 16), Seven Periods of Irish History (Gov't Ex. 17), War Against Women and Children (Gov't Ex. 18).

[6] Cease Firing (Gov't Ex. 28), Turkey Reborn (Gov't Ex. 29), The 100 Families That Rule the Empire (Gov't Ex. 32), What About Africa (Gov't Ex. 34), Children of the Slums (Gov't Ex. 31), The Whipping Block (Gov't Ex. 30), We Must Save the Republic (Gov't Ex. 35), The Way of the Aggressor (Gov't Ex. 33).

[7] "Inhumanity Unlimited," which purported to be from the French of Jeanne d'Arc Dillon La Touche, was in fact a

to change the names of the purported authors after he had given Hauck the manuscript.[8] After Hauck had received a complaint from an indignant customer, petitioner admitted that certain of the books were "adaptations" of other books previously published in other languages (Tr. 268).

At a conference between Hauck, Prescott Dennett, and petitioner in the latter's New York apartment during the winter of 1940–1941, Dennett indicated that he thought he could do some publicity work through a number of prominent Americans, including Congressmen with whom he was familiar, to promote sales of Flanders Hall books (Tr. 346–351). Following the conference Dennett furnished them a prospectus of a publicity campaign in which Dennett suggested the obtaining

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translation of a German book, "England's Herrschaft in Indien" by Reinhard Frank, published by the *Deutsche Informationsstelle* (Tr. 480–482). "Democracy on the Nile," which purported to be compiled from British sources by Sayid Halassie, Doctor of Divinity, an Ethiopian name, was in fact a translation from a German book, "England's Gewaltpolotik am Nil," by Paul Schmitz, Kairo (Tr. 482–484). "The Hapless Boers," which purported to be translated from the Dutch of Eugene Vroom, was translated from the German book "England und de Vuren" by Stephen Schroeder, published by the *Deutsche Informationsstelle* (Tr. 467–476, 478–479).

[8] According to the manuscript, the author of "Misadventure in Scandinavia" was Carl Hordsen, but petitioner told Hauck to change it to Arno Deutelmoser (Tr. 304–305). Similarly, the author's name for "War Against Women and Children" was changed at petitioner's direction from H. J. Bartone to Werner Schaeffer (Tr. 306–307).

of manuscripts from Congressmen for publication, and petitioner approved of this suggestion (Tr. 353–356). In connection with or as a result of Dennett's publicity work, "The 100 Families That Rule the Empire" was mentioned in a radio speech by Congressman Sweeney of Ohio (Tr. 362, 365–366). Flanders Hall also published "We Must Save the Republic," by Congressman Stephen A. Day of Illinois, after petitioner had improved the manuscript (Tr. 366–368). Hauck received a $1,000 check from the "Make Europe Pay War Debts Committee," (see pp. 15–18, *infra*) signed by Dennett, to be used to promote the sale of Congressman Day's work (Tr. 387).

Hauck also discussed with petitioner and Senator Rush Holt publication by Flanders Hall of two of Holt's manuscripts, one of which was "Who's Who Among the War Mongers" (Tr. 381, 382). Hauck saw the manuscript for "Who's Who Among the War Mongers" at petitioner's apartment in New York, and it then consisted of clippings from the Congressional Record, with penciled words connecting them (Tr. 373–374, 1042, 1043). Later he saw the manuscript in typewritten form at Holt's home in Washington (Tr. 383). The original Holt manuscript in clipping form was thereafter intercepted by the British at Bermuda and identified by the censor as having been found inside an envelope addressed to Dr. Hans Dieckhoff, Berlin, Germany, former German Ambassador to the United States, which envelope was in

turn contained within an outer envelope addressed to Senhor Hoyningero Hueneros, in Lisbon, Portugal, which was an alias used by the German Embassy in Lisbon (Tr. 1048–1061). The addresses on these envelopes had been typed on the same typewriter as were three letters from petitioner to Hauck (Tr. 1036–1037, 1085).

From August until December 1940, Flanders Hall received $11,750 from petitioner, and during 1941, $10,750, or a total of $22,500, none of which was repaid, except that petitioner, acting as agent for the company and the German Library of Information, retained $4,500 from the proceeds of two sales of books which he made to the Library. "The company itself never did make any profit" but "was a losing venture right from the very start." (R. 253–257.)

2. *Petitioner's connection with the "Make Europe Pay War Debts Committee."*—Petitioner conceived the idea of organizing a committee which was first known as the "Make Europe Pay War Debts Committee" and, subsequently, as "Islands for War Debts Committee" (Tr. 546–547, 605). In addition to petitioner, the organizers of the committee were the late Senator Lundeen of Minnesota, as chairman, Prescott Dennett, and Linn Gale (Tr. 546–547, 591–592; 598). Offices of the committee were established by Dennett, who also was the head of the "Columbia Press Service," in the Bond Building of Washington, D. C. (Tr. 548, 580). The committee carried on a vigorous program of dis-

seminating by mail, under Congressional frank, reprints of speeches by various isolationist members of Congress and other matter inserted in the Congressional Record under their extension of remarks (Tr. 581). Seven or eight people were employed "addressing franked speeches" and sending them out to thousands of names contained on mailing lists made up from Congressmen's "fan mail" (Tr. 551–554), "Who's Who in Law and Medicine," "Who's Who in the Clergy," "Who's Who in Business and Industry," "German-American Board of Trade" (Tr. 542–543, 586–588). There was testimony that "mail sacks of franked speeches were coming into the office practically every day," and "at one time there were approximately thirty sacks of mail of franked speeches" in the office (Tr. 552–553).

Late in 1940 or early in 1941 Dennett came to see George Hill, a clerk in Congressman Fish's office, and identified himself as being connected with "Make Europe Pay War Debts Committee" (Tr. 535–536). He gave Hill some material and suggested that Hill have it inserted in the Congressional Record. Hill had the article "England Expects Every American To Do His Duty" inserted in the Record under the remarks of Senator D. Worth Clark (Tr. 612–613), and ordered from the Government Printing Office 85,000 copies of reprints at a cost of $373.50, which was paid by Dennett (Tr. 615–616). Thereafter Dennett brought an article, "Giddy Minds and Foreign

Quarrels," to Hill and said he could not get anyone else to put it in the Record. Hill had it inserted under the remarks of Senator Clark (Tr. 618) and ordered 10,000 reprints at a cost of $73.45, which was paid by Dennett (Tr. 619–621). Hill had inserted in the Record "Mrs. Lundeen Answers Walter Winchell" and ordered 25,000 reprints thereof at a cost of $55.22, which was supplied by Dennett (Tr. 625–626). He also obtained for Dennett 25,000 reprints of "Aid to England" at a cost of $47.55 (Tr. 624–625); 25,000 reprints of "No Further Without War" at $47.55 (Tr. 626); 60,000 reprints of an article in three parts entitled "You Are on Your Way to War," "Stop the March to War" and "Three Steps to War" at $196.20 (Tr. 626–628); 50,000 copies of "Mrs. Roosevelt is Mistaken" at $86.15 (Tr. 629); 28,000 copies of "Three Warnings" and 30,000 copies of "We Burned Our Fingers Once" (Tr. 630–631). Hill received from Dennett something like $3,000 over a period of seven to eight months to purchase reprints of what was inserted in the Record (Tr. 623–624).

Throughout this period, petitioner worked closely with Chairman Lundeen of the Committee, holding conferences with him in the Senate Office Building as often as "two or three times a week" (Tr. 933, 715–716, 762). He also conferred with Dennett "in the inner office" of the Committee's headquarters, "discussing, or going over letters

and material and correspondence," and when petitioner was in New York Dennett communicated with him by long-distance telephone (Tr. 548–549). Committee stationery, envelopes and cards were sent to him in New York; and mailing lists were prepared for him (Tr. 542–543, 546, 586–588), many of which he also furnished to Flanders Hall (Tr. 405–412, 417–418).

3. *Petitioner's activities on Capitol Hill.*—Throughout the period of the indictment, petitioner frequented the Senate and House Office Buildings, especially the offices of the late Senator Lundeen of Minnesota and Congressman Hamilton Fish of New York, his friend of ten or fifteen years' standing (Tr. 933, 520, 648, 650, 670). He was also friendly with the stenographers and clerks in these offices and there was testimony that "he was throwing $5 bills for them to buy candy" (Tr. 751).*

The record shows that petitioner wrote at least three speeches, two of them in collaboration with the German Embassy, which were delivered by Senator Lundeen, inserted in the Congressional Record, reprinted and distributed under the congressional franking privilege. Thus, on March 23,

* When an employee of the "Make Europe Pay War Debts Committee" told petitioner that she had seen him at the Committee's office, he told her "I should have bought you some candy, and then you would not have seen me over there" (Tr. 556).

1940, petitioner called the German Embassy by telephone from Senator Lundeen's office and told them he had to have "the material for Senator Lundeen's office." After some conversation petitioner stated, "Monday will be all right." (Tr. 723.) On Monday, March 25, 1940, a messenger from the German Embassy arrived at the Senator's office with an envelope, asked for petitioner, and when he learned the petitioner was not there at that time, left the envelope and asked that it be delivered either to petitioner or Senator Lundeen (Tr. 723-724). The envelope contained a typewritten speech concerning the activities of the late Lord Lothian, British Ambassador to the United States, and was entitled "Lord Lothian against Lord Lothian" (Tr. 725). The speech was subsequently published by Flanders Hall in pamphlet form and advertised as containing "The most powerful arguments * * * against spilling the blood of our sons on European battlefields" (Tr. 324).

On another occasion during March 1940, in Senator Lundeen's office, petitioner dictated the outline for a speech entitled "German-American Trade Relations" (Tr. 936-937). After petitioner and Senator Lundeen went over this outline, petitioner had the German Embassy send to the Senator's office the necessary material to fill in the outline (Tr. 938-939). Senator Lundeen did not use the material collected by one of his clerks, say-

ing that petitioner had better material (Tr. 778–779).[10]

The speech "German-American Trade Relations" was inserted in the Congressional Record on June 12, 1940 (Tr. 728–730), and the speech "Lord Lothian against Lord Lothian" was inserted in the Congressional Record on June 19, 1940 (Tr. 241, 726), both under the remarks of Senator Lundeen. Petitioner went over the Lord Lothian article in the Congressional Record with the Senator in the latter's office and the Senator remarked, "Well, there can be no objection to that, because it is actual quotations from Lord Lothian." Later when they were leaving the office, the Senator said to petitioner, "There is one thing, one mistake we made in that speech, and that is that we left out headings." (Tr. 765–767, 941.)

In July 1940, Senator Lundeen called George Hill in the office of Representative Fish by telephone and mentioned that he was going to make a speech concerning the activities of six important men involving the United States in war, and talked about having copies of it mailed out. Petitioner was there and also talked to Hill about mailing out copies of the speech. (Tr. 768–772.) At 6:30 that evening, in Senator Lundeen's office, the Senator

[10] Senator Lundeen's files also contained "a great many other envelopes from Hans Thomssen of the German Embassy" (Tr. 734), and after the Senator's death on August 31, 1940 (Tr. 744, 853, 911, 1112), Mrs. Lundeen took all of the Viereck matters out of her husband's files (Tr. 791).

and petitioner were working on a draft of this speech—"Six Men and War"—and petitioner stated, "I have tried to phrase it in the best way I could in a manner in which you speak." At 10:30 that night they were still working on it together in the Senator's office. (Tr. 773–775.)

At or about this time Representative Fish introduced petitioner to the Congressman's clerk, George Hill, and told Hill that petitioner wanted to mail out some speeches of Senator Lundeen and also told him to send them out to the mailing list of The National Committee to Keep America Out of Foreign Wars, of which Fish was the chairman (Tr. 519–520, 648, 649–650). Petitioner informed Hill that he wanted to send out 125,000 copies of Senator Lundeen's speech "Six Men and War" and told Hill to contact the Senator for all of the details including payment. When petitioner learned that the Committee's mailing list had 100,000 names he asked Hill for a copy and gave Hill two $50 bills as a "tip" for it. (Tr. 521–523.) Petitioner then asked Hill if he had any other lists. Hill replied that he did not but agreed at petitioner's request to make up a list of "Who's Who in America." Upon delivery of this list, petitioner gave Hill another "tip" of two $50 bills for it. (Tr. 521–523, 530.) Subsequently, 123,000 copies of the speech "Six Men and War" were mailed out by Hill for petitioner under Senator Lundeen's frank, and the Senator paid Hill for them (Tr. 523–527, 607–608).

503962—43——4

SUMMARY OF ARGUMENT

1. The Act, with sufficient definiteness, apprised registrants that they must report all details of their activities in respect of the dissemination of political propaganda. The Act provides for the punishment of any person who "willfully omits to state any material fact" in his registration statements. In the light of the manifest purpose of the Act, the activities in question were plainly material facts required to be stated. The standard of materiality is not uncommon in criminal statutes. Furthermore, the statute was implemented by regulations, rules and registration forms. The regulations required registration on the part of one engaged in political propaganda activities "whether or not" those activities were "on behalf of" his foreign principal. The registration form required a "comprehensive statement of nature of registrant's business." Neither expressly nor by implication was the requirement limited to political propaganda activities on behalf of the foreign principal.

Furthermore, petitioner is in no position to complain of indefiniteness of the statute or regulations. Petitioner has been convicted of a willful omission to disclose material facts. The evidence supports the conclusion that, in the language of the court's charge, he willfully intended to conceal from the Secretary of State and the American people the political propaganda activities in question, and to that end willfully omitted to include these activities

in his response to question 11 of the registration form. The Act and regulations were, on any view, sufficiently definite to put petitioner on warning. When one knows that he has come close to the line "it is familiar to the criminal law to make him take the risk" (*United States* v. *Wurzbach*, 280 U. S. 396, 399). Petitioner failed to seek resolution of whatever doubts he may have had by making inquiry of those charged with administering the statute. The statute does not impose a prohibition on liberty of conduct but requires only disclosure of facts, and petitioner chose the hazard of criminality rather than the certain protection of full disclosure. There is here involved no question of indefiniteness which leaves to the jury a law-making function after the event. Cf. *Herndon* v. *Lowry*, 301 U. S. 242, 261–264.

The Secretary was authorized to require disclosure of all the registrant's political propaganda activities. Otherwise it could not be known in which of his dual capacities a registrant was acting. There can be no doubt that Congress intended, when it passed the Act, to prevent the spreading of political propaganda by foreign agents unless the public was fully informed as to the possibility that it was subsidized from abroad.

2. The indictment was sufficient. Notwithstanding the absence of proof that the activities charged were "hostile to the United States" or "disloyal to our country," or anything "more than an ill-advised business venture," or that petitioner "was

acting as the agent of any foreign principal," these activities were required to be reported; and the allegations in the indictment that petitioner willfully failed to disclose them clearly charged a violation of the statute. (Pet. Br. p. 57.)

The prosecutor was not guilty of reversible misconduct. Neither individually nor collectively, do the acts complained of constitute prejudicial error, particularly since this is no "weak" case, petitioner not questioning the sufficiency of the evidence. The mail bag incident was, at the most, but unnecessary stage business. The complaints that the prosecutor attempted "to create sinister aspects" and to "smear" certain members of Congress are, in reality, but protests against the admission of damaging evidence. The reference in the prosecutor's argument to the jury to passages from the book "Spreading Germs of Hate" were proper since the book had been admitted in evidence, and even the petitioner made liberal use of the book. Apart from the fact that timely objection was not made to the prosecutor's statements in summation, they must be read in the light of defense counsel's summation, to which they were addressed in rebuttal. Finally, the court did instruct the jury that our relations with Germany were not to be considered on the question of guilt or innocence, and that petitioner's registration did not warrant an assumption that he was engaged in unpatriotic conduct.

ARGUMENT

I

THE ACT OF JUNE 8, 1938, AS AMENDED, AND THE REGULATIONS REQUIRED WITH SUFFICIENT DEFINITENESS THE DISCLOSURE OF PETITIONER'S ACTIVITIES AS A PROPAGANDIST

1. *The Requirements of the Act were Sufficiently Definite.*

Petitioner, who by registering admitted that he was a propaganda agent of a foreign principal,[11] contends that if his activities constituted "material" facts required to be disclosed on his supplemental registration forms, the Act of June 8, 1938, as amended, was unconstitutional for failure to fix any standard of conduct (Br. 38, 40–42, 45–48).[12]

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[11] Persons "performing only private, *nonpolitical*, financial, mercantile, or other activities in furtherance of the *bona fide* trade or commerce" of their foreign principals were exempted from registering by section 1 (d) of the Act. (Italics supplied.) Similarly, Part I, Chapter II (18), App. B, pp. 9–10, of the Regulations adopted by the Secretary, provides "The term *nonpolitical activities in furtherance of bona fide trade or commerce* means such activities as are religious, educational, professional, scientific, or related to the fine arts, which do not in any essential respect relate to the establishment or conduct of a government or relations between one government and another."

[12] The statute under which the indictment was drawn was further amended by the Act of April 29, 1942 (Pub. 532, c. 263, 77th Cong., 2d Sess. [S. 2399]). See App. A, p. 5, *infra*. The court below (R. 343–345) adequately disposed of petitioner's argument (Br. 37, 44, 48, 55, 69) that this amendment, which expressly defines the material facts to be disclosed, supplies a *casus omissus* in the earlier Act.

More specifically, he argues that the Act, which provided for the punishment of any person who "willfully omits to state any material fact" in his supplemental registration statement was indefinite and uncertain in that the Act failed to define what "is a material fact required to be stated" (Br. 38).

Petitioner's contention is without merit. It is submitted that the Act, with sufficient definiteness, apprised registrants that they must report their activities in respect of the dissemination of political propaganda.

Section 5 of the Act provided that:

> Any person who * * * in complying with the provisions of this Act * * * willfully omits to state any material fact required to be stated therein shall * * * be punished * * *.

As the court below pointed out, "such a phrasal criterion [any material fact required to be stated] has long been an accepted part of our system of laws" (R. 344). And we submit that what was "material" in this case was plain from the various provisions of the Act. Thus, its purpose, as stated in the title of the Act (App. A, p. 1), was "to require the registration of certain persons employed by agencies *to disseminate propaganda in the United States* and for other purposes." [Italics added.] Only *political* propagandists were required to register, those performing nonpolitical activities being expressly exempted and registration being required only of "any per-

son who acts or engages or agrees to act as a *public-relations counsel, publicity agent, or as agent, servant, representative, or attorney* for a foreign principal" (Sec. 1 (d), App. A, p. 1). [Italics added.] By Section 3 (c) of the Act (App. A, p. 4), the Secretary of State was directed to require "such details required under this Act as * * * [he] shall fix, of the activities" of the registrant "as agent of a foreign principal" during the semi-annual period; and Section 6 (*ibid.*) "authorized and directed" him "to prescribe such rules, regulations, and forms as may be necessary to carry out this Act." It seems plain, therefore, that from the face of the statute any registered propagandist would know that the Secretary was required to obtain information as to the registrant's activities of a political nature in connection with the dissemination of propaganda in the United States, and that the failure to disclose such activities when called for, would constitute an omission of a "material fact."

In *Coplin* v. *United States*, 88 F. (2d) 652 (C. C. A. 9), certiorari denied, 301 U. S. 703, the constitutionality of certain sections of the Securities Act of 1933 was challenged. Among other things, it was argued that Section 17 (a) (2) violated the Fifth and Sixth Amendments to the Constitution in that such section "does not meet fair and honest standards for the legal definition of crime, because it is vague, indefinite, and fails to state an immutable standard of guilt." This section made it ille-

gal to sell securities in interstate commerce "by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." In upholding the constitutionality of this section, the court stated (at p. 657.):

> No honest and reasonable citizen could have difficulty in understanding the meaning of "untrue," "material fact," "any omission to state a material fact," "in the light of the circumstances under which they were made," or "misleading." All these terms, it is true, call for interpretation in accordance to the facts of a given case. So do the terms "malice," "probable cause," "self-defense," "negligence," "fraud," "duress," "justification," and thousands of other expressions well established in the law.
>
> Isolated from their setting, any of the foregoing terms might be said to be "indefinite" or "uncertain"; but, "in the light of the circumstances under which" they are used, their meaning is clear enough to the reasonable and well-intentioned citizen. "That is certain which may be rendered certain."

See also *Gorin* v. *United States*, 312 U. S. 19, 26–28, upholding the prohibition contained in the Espionage Act against obtaining information "connected with" "the national defense," and in which the cases are collected (p. 27); and also *United States* v. *Ragen*, 314 U. S. 513, 524.

In the present case the Act does not stand alone. It was administered in accordance with Regulations which gave the familiar statutory language more concrete content. In *United States* v. *Cohen Grocery Co.*, 255 U. S. 81, and similar cases relied upon by petitioner, the statute which was held to be too vague and indefinite was not implemented by regulations as in the instant case. A statute which might otherwise be indefinite will not be held to be invalid if it receives administrative or judicial refinement before it is applied. *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77, 81–82; *Miller* v. *Schoene*, 276 U. S. 272, 281; *Kay* v. *United States*, 303 U. S. 1, 9; *Noblett* v. *Carpenter*, 305 U. S. 297, 302–303; see *Smith* v. *Cahoon*, 283 U. S. 553, 565; *Champlin Refining Co.* v. *Commission*, 286 U. S. 210, 242; *Small Co.* v. *American Sugar Ref. Co.*, 267 U. S. 233, 239; cf. *Bandini Co.* v. *Superior Court*, 284 U. S. 8, 18; *Old Dearborn Co.* v. *Seagram Corp.*, 299 U. S. 183, 196.

2. *The Registration Forms, Rules and Regulations Promulgated by the Secretary Called for Full Disclosure of All of the Registrant's Political Propaganda Activities.*

In petitioner's supplemental registration statements he declared under oath that he had read the provisions of the statute and the rules and regulations issued pursuant thereto. (R. 29, 33, 47.)

a. By Paragraph (12), Chapter IV, Part I of the Regulations (App. B, p. 15), petitioner was informed that he was "subject to the requirement of

registration" if he engaged in political propaganda activities, "whether or not" those activities were "on behalf of" his foreign principal. In other words, even if none of his political propaganda activities were performed for his foreign principal, he was still "subject to the requirement of registration," and, as the court below said (R. 334), this meant "not only the act of registering but also the duties and concomitants of registration." One of the duties incident to registration was to give, at the end of each six months, a "comprehensive statement of nature of business of registrant"—as called for by Requirement 11 of the Registration Form (R. 28, 31, 45). Obviously, this directive was definite and certain that the statement should concern *his* (the "registrant's") business, and neither expressly nor even impliedly was it limited to what was done on behalf of the foreign principal. Petitioner's contention (Br. 44) that Paragraph (12) merely identified those who must register is untenable, for the paragraph would, in that event, have been superfluous in view of Part I, Chapter III of the Regulations, which outlined Section 2 of the Act, identifying those required to register (App. B, p. 11). Moreover, if Paragraph (12) and Requirement 11 of the form considered together simply called for a statement of petitioner's activities on behalf of his foreign principal, they would also have been useless, for the reason that they would have required no more information than that disclosed in answers to the other ques-

tions on the form and in the terms of petitioner's formal contracts, copies of which were filed, as required, with the various statements.

b. It is likewise plain that the requirement of a "comprehensive statement of nature of business of registrant" called not for a broad, general statement of the registrant's "avocation" (Br. 7) but for a full, complete [13] statement of his activities. Whatever might be the meanings of "comprehensive," "nature" and "business" when divorced from their context, as relied upon by petitioner (Br. 6–8, 58, 59), we submit that when considered in the light of the statute, the registration form, and the regulations, "comprehensive statement of nature of business" meant a full disclosure of petitioner's propaganda *activities*. That activities, and not a mere generalized characterization of petitioner's pursuits, were required to be reported, was indicated, we believe, by the references to activity or activities in Sections 1, 2, 3 and 4 of the statute and in eighteen separate paragraphs of the Regulations explaining registration requirements.[14] As the court below indicated (R. 335), "The form, moreover, has some 8½ blank lines" for answering Requirement 11, which provision

[13] Petitioner's present counsel admitted at the trial (Tr. 1441–1443) that a comprehensive statement was one that was "full, complete."

[14] See Rules and Regulations, Part I, Chapter II, pars. (13)–(15), (17)–(22), and Chapter IV, pars. (12)–(18), (21) and (22), App. B, pp. 8–10.

would hardly have been necessary if a mere generalized answer such as petitioner gave was expected. Certainly it was no answer to these requirements to respond, as petitioner did, that his activities were merely those of an "author," "journalist" and "publicist." By his very act of registering, he admitted that he was engaged in *political* activities on behalf of his foreign principals, for under Section 1 (d) of the Act (App. A, p. 1) and Part I, Chapter II (18) (App. B, p. 9), of the Secretary's Regulations, a person engaged in "nonpolitical" activities, such as a *bona fide* journalist, was exempted from registration. As the court below pointed out (R. 329) the "designation of author and journalist does not even summarize the outer confines of defendant's occupational pursuits."[15]

[15] Petitioner also contends (Br. 66–67) that the "trial court over-shot the case before it" when it referred to the legislative history of the statute in its instructions to the jury. The full text of the court's charge is set forth in Appendix C, pp. 19–56. His position now seems to be that since he was being tried only for omitting material facts in his supplemental registration statements it was error for the court to discuss the Act, its history, scope and purposes generally, when only Sections 3 and 5 thereof, paragraph 11 of the forms, and the regulations relating to supplemental registration were involved. Obviously, a general understanding of the Act, what foreign agents were required to register, and what disclosures were required in the initial registration statements were essential to any kind of an understanding of the requirements which related solely to the supplemental registration statements filed every six months. Moreover, petitioner's objection at the trial to this portion of the charge was that the court in interpreting the statute could not go

3. *In view of the Element of Willfulness in the Offense, Petitioner cannot Complain of Indefiniteness of the Statute or Regulations.*

The sanctions of the statute were not applicable unless the registrant "willfully" concealed his propaganda activities; and this Court has held that where scienter must first be proved before the penalties of a statute may be applied, there is no real basis for an attack upon the statute on the ground of vagueness. *United States* v. *Ragen*, 314 U. S. 513, 524; *Gorin* v. *United States*, 312 U. S. 19, 27–28; *Hygrade Provision Co.* v. *Sherman*, 266 U. S. 497, 501; *Omaechevarria* v. *Idaho*, 246 U. S. 343, 348.

In the present case the charge was that petitioner "willfully" omitted to disclose material facts. And contrary to petitioner's contention (Br. 61–66), now advanced for the first time, the evidence summarized in the Statement, *supra*, shows there was

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beyond "the four corners of the statute" (R. 102–106, 104)—which, of course, was not a valid objection (*United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534, 543–544; *United States* v. *Raynor*, 302 U. S. 540, 543)—and, accordingly, that is the only ground which he is now in a position to urge. *Walsh* v. *Rosenberg*, 81 F. (2d) 559, 561–562 (App. D. C.), certiorari denied, 298 U. S. 663; *United States* v. *United States Fidelity and Guaranty Co.*, 236 U. S. 512, 529. Similarly, since, as we have shown, petitioner, as a registrant under the Act was required to report all his propaganda activities whether as agent or otherwise, his contention (Br. 68) that the court should have refused the Government's prayers Nos. 2, 2A, and 8 to that effect, and should have granted his prayer No. 19 to the contrary, is also without any tenable basis.

abundant proof of a willful intent to violate the statute. The record is replete with evidence of the indirection and secrecy with which petitioner shrouded his political propaganda activities, and of the substantial amount of time and money they involved. They were not casual, but highly calculated, enterprising, and covert.

Petitioner refers (Br. 66) to certain passages in the book *Spreading Germs of Hate* as a basis for his assertion that "The evidence in the record negatives any such conclusion," i. e., that his omission to disclose his activities was willful: "during the last World War * * * he assisted in Liberty Bond drives * * * and * * * received official thanks for 'effectiveness of his official advice'." It was for the jury, however, to weigh these statements along with petitioner's present conduct and the further admissions in his book that "There is no safeguard which the law can create which human ingenuity cannot circumvent" (Gov't. Ex. 12, p. 90); that "Every propagandist draped himself in the flag" (*id.*, p. 106); and that prior to our entry in the last war he was a guiding force among foreign agents who sought to mold American public opinion, where possible, through "a propaganda wolf in sheep's clothing" (*id.*, p. 105).

With this proof before it, the jury was advised not only that petitioner was required to disclose all of his political activities (Tr. 1601, App. C, p. 44), but that the jury must find that petitioner

knew he was obliged to make such a disclosure and "had the deliberate intention of avoiding the requirements of the statute" (Tr. 1594–1595, App. C, p. 39), and that they must find "whether when defendant stated 'author and journalist' in response to query No. 11 he willfully intended to conceal from the Secretary of State and the American people his activities in connection with Flanders Hall, the so-called War Debt Committees, the mailing under Congressional frank of large quantities of reprints of so-called non-interventionist material, and the writing of all or part of certain speeches for members of the Congress, and to that end willfully omitted to include these activities in his response to Query No. 11." (Tr. 1598, App. C, p. 42.) This charge was given in addition to the charge that mistake of law is no defense (Tr. 1599–1600, App. C, p. 43).

Moreover, apart from this charge, the circumstances of the offense are important in assessing a claim of indefiniteness. The statute did not lay a flat prohibition upon liberty of conduct, nor did it impose a financial obligation; it simply required disclosure of information. And the information in question, viewed most favorably to the petitioner, must have been considered by him in relation to the registration forms; it was of a character closely related to the matter which he admittedly was obliged to disclose; and it was within the purpose of the Act. The Act and Regulations were, on any view, sufficiently definite to put petitioner

on warning. Petitioner's want of caution in such a matter is not entitled to constitutional protection. When one knows that he has come close to the line "it is familiar to the criminal law to make him take the risk." *United States* v. *Wurzbach*, 280 U. S. 396, 399. As was there said by Mr. Justice Holmes:

> The other objection is to the meaning of "political purposes." This would be open even if we accepted the limitations that would make the law satisfactory to the respondent's counsel. But we imagine that no one not in search of trouble would feel any. Whenever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk. *Nash* v. *United States*, 229 U. S. 373.

Indeed, petitioner failed to seek from the Secretary of State whatever clarification seemed to be necessary; though he was at pains to do so with respect to other aspects of registration and so was aware that consideration and reply would be given to such inquiries (R. 78–86).

This is not a case, it is to be noted, where indefiniteness of a criminal statute puts to the hazard of a jury the criminality of conduct over a wide range, thus in effect leaving the law-making func-

tion to the jury after the event. Cf. *Herndon* v. *Lowry*, 301 U. S. 242, 261–264. This is a case where the petitioner himself was apprised with exceptional directness of the legislative standards and their administrative interpretation, and himself chose the hazard of criminality rather than the certain protection of full disclosure.

We submit, therefore, that petitioner, as an expert propagandist, skilled in the art of circumventing the law (Gov't Ex. 12, p. 90) cannot be heard to say that the statute failed to advise him that he was required to disclose as an acknowledged foreign agent that he was engaged in a far-flung program to influence the foreign policy of this country. Cf. *Fox* v. *Washington*, 236 U. S. 273, 277; *Miller* v. *Strahl*, 239 U. S. 426, 432, 434; *United States* v. *Wurzbach*, 280 U. S. 396, 399; *International Harvester Co.* v. *Kentucky*, 234 U. S. 216, 223. And see Brief for United States in *Gorin* v. *United States*, 312 U. S. 19, Nos. 87, 88, October Term, 1940, pp. 67–74.

4. *The Secretary was Authorized to Require in the Supplemental Registration Statements Disclosure of all the Registrant's Political Propaganda Activities.*

Petitioner contends (Br. 39, 41–43) that even though the statute required disclosure of propaganda activities performed as agent for a foreign principal, nothing in the Act authorized the Secretary to require disclosure of a registrant's

political propaganda activities which were outside the scope of his agency."

As is apparent from the synopsis of the Act appearing in the opinion below (R. 330–331), and *supra*, at pp. 26–27, there can be no doubt that one plainly indicated purpose of the Act was to require every agent of a foreign principal who disseminated political propaganda in this country to register and disclose *all* of his activities on behalf of his foreign employer. But such a measure, concerned as it was with disclosure of the source which nurtured foreign propaganda, would, indeed, have been a halfway measure had it not required, or at least authorized the Secretary of State to require, the registrant to reveal the propaganda he put out on his own, as well as that he put out as an agent. "Otherwise," as was said by the court below (R. 333), "it could not be known in which of his dual capacities a registrant was acting." By setting up an ostensibly legitimate business connection every registrant could have scoffed at the law and could have engaged unrestrictedly in furthering, by the spreading of propaganda, the objectives of his foreign principal. There can be no doubt that Congress intended, when it passed the Act, to prevent

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[16] While we think, as did the court below (R. 341–343), that there was abundant proof from which the jury might have inferred that all that petitioner did was done on behalf of German principals, the jury was instructed that petitioner was required to report all of his political propaganda activities (Tr. 1601, App. C., p. 44). Hence the conviction must be sustained on that basis.

the spreading of political propaganda by foreign agents unless the American public was fully informed as to the possibility that it was subsidized from abroad." That petitioner, in particular, was

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[11] Pursuant to House Resolution 198, 73d Congress, 2d session, a special committee, of which Representative McCormack, of Massachusetts, was chairman, was appointed by the House of Representatives to conduct "an investigation of (1) the extent, character, and objects of Nazi propaganda activities in the United States [and] (2) the diffusion within the United States of subversive propaganda that is instigated from foreign countries * * *." After nine months of investigation, during which hearings were held in six different cities, the Committee rendered its final report on February 15, 1935 (H. Rep. 153, 74th Cong., 1st sess., p. 1), in which it found that "this country has been flooded with propaganda material" (*id.*, p. 8) from various alien organizations outside the United States, which were "engaged in vicious and un-American propaganda activities" (*id.*, p. 5) for the purpose of gaining "adherents" (*id.*, p. 4) and "to influence the political opinions of many of our people" (*id.*, p. 22), and also to "influence, if necessary and possible, our governmental policies" (*id.*, p. 7). It further found that "all kinds of efforts and influence, short of violence and force, were used to obtain its desired objective, which was to consolidate persons * * * into one group, subject to dictation from abroad" (*id.*, p. 9). The evils arising from Nazi employment of ostensibly legitimate business connections as a "smoke screen" for propaganda activities were called forcibly to the attention of Congress in unequivocal terms.

"As a result of" the Committee's recommendations, a bill (H. R. 1591, 75th Cong., 1st sess.), which subsequently became the act under which petitioner was indicted (Act of June 8, 1938, c. 327, 52 Stat. 631), was introduced at the next session of Congress "to require all persons who are in the United States for political propaganda purposes—propaganda aimed toward establishing in the United States a foreign system of government, or group action of a nature foreign to our institutions of government, or for any other

well aware of this fact is, likewise, evident, since his very propaganda activities for other German principals were exposed before the Committee which drafted the act and were set forth in the Committee's report urging its passage.[18] Indeed, inasmuch as petitioner was one of the principal witnesses before the Committee, he can hardly deny that he was forewarned that the legislation was designed to require him to disclose his propaganda activities. Under these circumstances, petitioner

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purpose of a political propaganda nature—*to register with the State Department and to supply information about their political propaganda activities*, their employers, and the terms of their contracts." H. Rep. 1381, 75th Cong., 1st sess., p. 2. This report was appended to and made a part of the report (S. Rep. 1783, 75th Cong., 3d sess.) submitted by the Senate Committee on Foreign Relations recommending the bill's passage in the Senate. The required registration was intended to "publicize the nature of subversive or other similar activities of such foreign propagandists, so that the American people may know those who are engaged in this country by foreign agencies to spread * * * propaganda for the purpose of influencing American public opinion on a political question" (*ibid.*). Congress was advised that "Propaganda efforts of such a nature are usually conducted in secrecy, which is essential to the success of these activities," and that the "spotlight of pitiless publicity" would "serve as a deterrent to the spread of pernicious propaganda," and believed that the passage of the bill would "force propaganda agents representing foreign agencies to come out 'in the open' in their activities" or subject themselves to the penalties provided (id., pp. 2, 3). (Italics supplied.)

[18] To quote from the McCormack Committee report (H. Rep. 153, 74th Cong., 1st sess., pp. 5–6) recommending passage of legislation requiring registration of agents of foreign principals:

should have been scrupulous to comply fully with the Act, but his correspondence with the State Department (R. 78–86) indicates that he studiously avoided even making any inquiry as to his duty to

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Several American firms and American citizens as individuals sold their services for express propaganda purposes, making their contracts with and accepting compensation from foreign business firms. The firms in question were Carl Byoir & Associates and Ivy Lee-T. J. Ross. The owner of the Ivy Lee-T. J. Ross firm admitted to the committee that the reports he furnished to the I. G. Farben Industrie, his ostensible employer, dealt with public and political questions rather than trade promotion, and that they were intended to be relayed to the German Government. For this service he received $25,000, all payments of which were in cash, and an effort was made to secrete the connections. Mr. Lee also admitted that he had never made such a contract before (p. 192, N. Y. 7).

Carl Dickey, junior partner of Carl Byoir & Associates, testified that his firm handled the contract with the German Tourist Bureau with the fee for services set at $6,000 per month. He testified that the contract was secured with the help of George Sylvester Viereck who received $1,750 per month with free office space and secretary as his share of the $6,000. The committee finds that the services rendered by Carl Byoir & Associates were largely of a propaganda nature (pp. 33–67, D. C. 4).

Viereck admitted that he discussed the Byoir contract with a German Cabinet officer before it was entered into. He further testified that he had also been paid the sum of $500 monthly "for 4 or 5 months" by Dr. Kiep, former German consul-general in New York City, which was paid in cash for advice of a propaganda nature (pp. 87–111, N. Y. 7).

The first payment on the contract amounting to $4,000 was made by Dr. Kiep, German consul-general of New York City, in cash.

report the activities charged in the indictment. Moreover, in authorizing and directing the Secretary, in Section 6 of the Act (App. A., *infra*, p. 4) "to prescribe such rules, regulations, and forms as may be necessary to carry out" the Act, Congress sought to insure the administrative implementation necessary to effectuate its purposes. Certainly, to use the language of the court below (R. 333), "In view of the logical necessity of knowing all of an agent's political activities either as an agent or on his own and in view of the fact that 'carry out' must mean 'make-workable', it appears that the Act authorizes the Secretary to require the full disclosure."

Furthermore, as pointed out by the court below (R. 333–334), citing *United States* v. *Curtiss-Wright Export Corp.*, 299 U. S. 304:

> It is of interest to note that this authorization is running to the Secretary of State. The President, the Head of our Executive Branch, has the main power over foreign affairs. The Department of State is the cabinet branch through which the Executive works in problems of foreign affairs. This Act deals with agents who disseminate propaganda for foreign principals. While the registrant may be a citizen of this country, he may put himself under the Executive's power over foreign affairs when he acknowledges that he is a paid political agent of a foreign principal. Thus one can read a little more liberally the Act's authorization

> to the Secretary to do that which will make the statute work, and a full disclosure of all political activities of an agent as agent or as his own is a *sine qua non* for feasibility. * * *

Finally, it may be said that requirement 11 of the registration form, asking the registrant for a report as to *his* business, and not limited to agency activities, received the approval of Congress by its failure to change the Act of June 8, 1938, in any pertinent respect in the amendment of August 7, 1939. Cf. *United States* v. *Dakota-Montana Oil Co.*, 288 U. S. 459, 466; *Johnson* v. *Manhattan Ry. Co.*, 289 U. S. 479, 500; *Brewster* v. *Gage*, 280 U. S. 327, 337; *United States* v. *Hines*, 103 F. (2d) 737, 742 (App. D. C.); *Guaranty Trust Co.* v. *Commissioner of Internal Revenue*, 79 F. (2d) 245, 246 (C. C. A. 2); *Allen* v. *Morsman*, 46 F. (2d) 891, 894 (C. C. A. 8); *The Habana*, 63 F. (2d) 812, 813 (C. C. A. 2).

II

THE INDICTMENT ALLEGED OFFENSES CONDEMNED BY THE STATUTE AND THE PROSECUTOR WAS NOT GUILTY OF REVERSIBLE MISCONDUCT

Petitioner also urges as grounds for reversal (1) that the indictment fails to allege an offense under the Foreign Agents' Registration Act (Br. 56–57) and (2) that the prosecutor was guilty of misconduct (Br. 49–56). Each of these contentions is without merit.

1. *The indictment was sufficient.*—In support of his contention that "the charge in the indictment was no crime under the statute" (Br. 56–57) petitioner does not address himself to the allegations of the indictment but looks to the proof which, he claims, fails to show that his alleged political activities were "hostile to the United States" or "disloyal to our country" or anything "more than an ill-advised business venture," or "that he was acting as the agent of any foreign principal." Therefore, he seems to conclude, the indictment failed to allege an offense because "None of these activities was made a crime under the 1938 Act as amended" (Br. 57). It has been fully shown in Point I, *supra,* however, that petitioner was required to disclose all of his political and propaganda activities as agent for a foreign principal or on his own behalf, irrespective of whether he or his principal were merely attempting "to show that the United States should not enter the war at all" and "to convince fellow-Americans that they should not espouse the English cause in the war" (Br. 57). It follows, therefore, that by alleging that petitioner willfully failed to disclose his propaganda plainly to the Secretary of State, the indictment clearly charged offenses condemned by the Foreign Agents' Registration Act and was in all respects sufficient.

2. *The prosecutor was not guilty of reversible misconduct.*—Petitioner assigns as error "the misconduct of the prosecuting attorney" and the failure of the trial judge to instruct the jury "to

disregard such misconduct, particularly the inflammatory closing argument of such attorney for the Government" (Br. 36). Argument in support of the assignment is found under the heading that petitioner was "Tried and convicted as a foreign propagandist" (Br. 49–56) and scattered throughout remaining portions of the brief. As nearly as we can make out, the particular acts of alleged misconduct upon which petitioner relies are: (1) that the prosecutor caused a number of mail sacks containing reprints of speeches from the Congressional Record to be brought into the courtroom (Br. 26–27); (2) that he attempted "to create sinister aspects" (Br. 27) particularly by linking petitioner with certain non-interventionist members of Congress (Br. 16–20) and by proving that the original manuscript of "Who's Who Among the War Mongers" was intercepted by the British censor at Bermuda while it was en route from petitioner to Hans Dieckhoff in Berlin (Br. 27–28); and (3) that chiefly because of his references to petitioner's book, *Spreading Germs of Hate*, the prosecutor's summation was highly inflammatory (Br. 12–16, 49–56).

It is the position of the Government that none of the foregoing acts of the prosecutor, nor all of them together, constitute reversible error. Unlike *Berger* v. *United States*, 295 U. S. 78, upon which petitioner relies (Br. 54), this is not a "weak case." As the court below pointed out, even petitioner raises no question as to the "general sufficiency of

the evidence," and on this record "none could be" raised (R. 329). In no case that we have found has the judgment of conviction been reversed because of the conduct of the prosecutor where the evidence of guilt was as overwhelming and clear as in the present case. Moreover, even if the case against petitioner were not so strong, it is our position that the acts complained of would not entitle the petitioner to a new trial.

a. *The mail bag incident.*—The court of appeals characterized as "unnecessary stage business on the part of the prosecutor" (R. 350) his action in causing to be brought into the courtroom a number of mail sacks which purported to contain reprints of speeches which had been printed in the Congressional Record. We think it is clear from the entire record, however, that such impropriety as may be found in the prosecutor's action was engendered by his enthusiasm at the trial and not by any deliberate intention to be unfair; certainly it cannot be said that the incident tipped the balance against the petitioner.

Petitioner's counsel had expressed a desire to examine certain speeches of various Congressmen and Senators which George Hill had mailed out. The prosecuting attorney stated that he did not believe all the speeches were then in court but that there were some eighteen or twenty mail sacks full in the Marshal's office which could be brought into court for petitioner's counsel to examine. Petitioner's counsel made no objection to this proposal

(Tr. 663–664). During the afternoon session of the same day, Prescott Dennett was called by the court as a witness (Tr. 700), but declined to answer the court's questions, standing on his constitutional privilege against self-incrimination (Tr. 701–705). After the witness was excused, the prosecutor requested that he be recalled, and stated to the court in a side bar discussion that he wished to ask him to identify the sacks of speeches which were removed from his home, and which were the speeches petitioner's counsel had asked to see (Tr. 705–706). Petitioner's counsel objected to having the sacks brought in, stating that the speeches could be produced without producing the mail sacks. The court declined to recall the witness, but said nothing as to whether the prosecutor could bring in the mail sacks. Shortly thereafter, while the witness Hill, who had been recalled to testify, was on the stand, the mail sacks in question were brought into the courtroom, whereupon petitioner's counsel objected, stating that the court had just forbidden the prosecutor to bring in the sacks. The prosecutor denied that he had been forbidden to do so and referred petitioner's counsel to the record. The court, however, ordered the sacks to be removed, stating that there was no occasion for them. (Tr. 707–708.)

Viewed as a whole, we submit that the court of appeals correctly ruled that "the ends of justice would not be served * * * by reversing on instances of improper action like this" (R. 350), par-

ticularly since the jury had heard about these mail sacks from at least two witnesses (see Tr. 552–553, 582). Cf. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 237–243; *Shushan* v. *United States*, 117 F. (2d) 110, 116 (C. C. A. 5), certiorari denied, 313 U. S. 574.

b. *Attempts of prosecutor "to create sinister aspects."*—Petitioner also asserts that the prosecutor attempted to "smear" certain non-interventionist members of Congress and then linked petitioner with them (Br. 16–20) and further sought "to create the appearance of sinisterism" by proving that petitioner forwarded the original manuscript of "Who's Who Among the War Mongers" to Hans Dieckhoff in Berlin (Br. 27–28). It is clear, however, that petitioner's contention amounts to no more than a belated protest against the admission of damaging evidence and has nothing to do with the conduct of the prosecutor. That the evidence was properly received seems obvious. Petitioner's failure to disclose his association with members of Congress for political purposes was part of the gravamen of each count of the indictment. Similarly, the evidence which showed that petitioner surreptitiously sent a sample of his work to a high German official was not only relevant but almost conclusive proof that petitioner was acting as a propagandist for a foreign principal.

c. *The prosecutor's arguments to the jury.*—Petitioner's claim that the prosecutor's arguments

to the jury were inflammatory is mainly based upon his references to petitioner's own book, *Spreading Germs of Hate,* which was admitted in evidence [19] (Br. 12–16, 49–56). Having been properly admitted, however, the book was competent evidence, and a proper subject of reference and comment by the prosecutor. There is no rule preventing references by counsel to portions of a lengthy documentary exhibit or requiring that an entire document be read as prefatory to or in connection with a comment on or a quotation from it. Moreover, petitioner did not initially object to the selective manner in which the prosecutor quoted from the book (R. 123–131), but reserved the right to use it in the same manner (R. 123), and the objection was apparently an afterthought (R. 130–131). As the court below noted, the book was "used liberally by both sides" (R. 346), petitioner taking full advantage of his reservation and directing the jury's attention to some favorable portions of it (Tr. 895–897) which, the record shows, can be said to have constituted his chief defense.

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[19] Petitioner also assigns error on the admission of the book (Br. 35) but does not strongly press the point (Br. pp. 51–52, n. 11). As the court below held (R. 345–346), the book was admissible to show that petitioner's failure to disclose his propaganda activities was willful and intentional, and was not the result of chance, inadvertence, or ignorance. See 1 Wigmore, *Evidence* (2d ed.; 1923), secs. 301–302, 304; *Partridge* v. *United States*, 39 App. D. C. 571; cf. *Haywood* v. *United States*, 268 Fed. 795, 807 (C. C. A. 7), certiorari denied, 256 U. S. 689; *Langer* v. *United States*, 76 F. (2d) 817, 827 (C. C. A. 8).

The choice of language in summation must rest with the attorney, and it cannot be reversible error that he fails to coin his own but selects descriptive phraseology from the literary product of the defendant or some other source.

Petitioner also complains of other statements by the prosecutor (Br. 50). The trial judge (Tr. 1590–1591) and the court below (R. 350) pointed out that petitioner's first objections, coming in the middle of the charge to the jury, were made too late to permit the correction of any wrong inference by timely explanation. Cf. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 239; *Petrilli* v. *United States*, 129 F. (2d) 101 (C. C. A. 8), certiorari denied, October 12, 1942. Moreover, as the court below also suggested (R. 349), many of the prosecutor's remarks may have been provoked, in some measure, by defense counsel's attempt to turn the case into a trial of the Government and his comparison of the prosecution with a Communist, Fascist or Nazi persecution (Tr. 1528), and by his elaborate speculation that the indictment was brought to besmirch "five unnamed defendants," public officials, each of whom he discussed at length (Tr. 1511–1516). The statements now complained of were made in the Government's rebuttal. In its principal summation, the Government said (Tr. 1499–1500):

> Did this defendant engage in the activity with which he is charged? Is that activity

material information which the American public is entitled to know about, and did he disclose it? That is the only issue in this case. We are not trying ex-Senator Ernest Lundeen; we are not trying Congressman Hamilton Fish; we are not trying the issue of Isolationism versus Interventionism. That is being decided in another forum. We are not trying anyone but this defendant, George Sylvester Viereck, and we are not trying this defendant, George Sylvester Viereck, for anything but a willful failure to disclose propaganda activities required by law to be made known to the American public. That is the issue in this case.

Also, it is submitted that, if the complained of statements and characterizations are read in their original context, the particular language employed was justified by the evidence and "material to the philosophy" of the crime charged. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 239. A prosecutor may strike "hard blows" so long as he does not strike "foul" ones. *Berger* v. *United States*, 295 U. S. 78, 88. As Judge Learned Hand said in *Di Carlo* v. *United States*, 6 F. (2d) 364, 368 (C. C. A. 2):

> * * * While, of course, we recognize that the prosecution is by custom more rigidly limited than the defense, we must decline to assimilate its position to that of either judge or jury, or to confine a prosecuting attorney to an impartial statement of the evidence. He is an advocate, and it is

entirely proper for him as earnestly as he can to persuade the jury of the truth of his side, of which he ought to be thoroughly convinced before he begins at all. To shear him of all oratorical emphasis, while leaving wide latitude to the defense, is to load the scales of justice; it is to deny what has always been an accepted incident of jury trials, except in those jurisdictions where any serious execution of the criminal law has yielded to a ghostly phantom of the innocent man falsely convicted.

Finally, the charge to the jury incorporated requests on behalf of petitioner which admonished the jury that our relations with Germany were not to be weighed in considering petitioner's guilt or innocence, and that his registration did not warrant an assumption that he was engaged in an unpatriotic activity. The court charged (Tr. 1604, App. C. pp. 46–47):

The defendant here was registered as the agent of certain principals domiciled in Germany. During the periods covered by this indictment the relations between this country and Germany were tense. Although we were then not in a state of war with Germany, the relationship was shrouded with an atmosphere of hostility and unfriendliness. These circumstances are to play no part in your consideration of the guilt or innocence of this defendant.

The mere fact of registration under the Act affords no ground for assuming that any

> person registered as an agent for a foreign principal, including this defendant, was engaged in an unpatriotic activity.

We therefore respectfully submit that it was the clear and convincing proof that petitioner had failed to disclose his propaganda activities and not the conduct of the prosecutor which impelled the jury to convict him and that he was given a fair and impartial trial. Cf. *United States* v. *Dubrin*, 93 F. (2d) 499, 506 (C. C. A. 2), certiorari denied, 303 U. S. 646, where the court said:

> The attempt to turn this trial of men whose guilt was abundantly proved into a trial of government's counsel, though a not infrequent expedient of defendants who have no other recourse, ought not, in our opinion, to succeed.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment below should be affirmed.

CHARLES FAHY,
Solicitor General.

WENDELL BERGE,
Assistant Attorney General.

OSCAR A. PROVOST,
ANDREW F. OEHMANN,
Attorneys.

JANUARY 1943.

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No. 458

In the Supreme Court of the United States

OCTOBER TERM, 1942

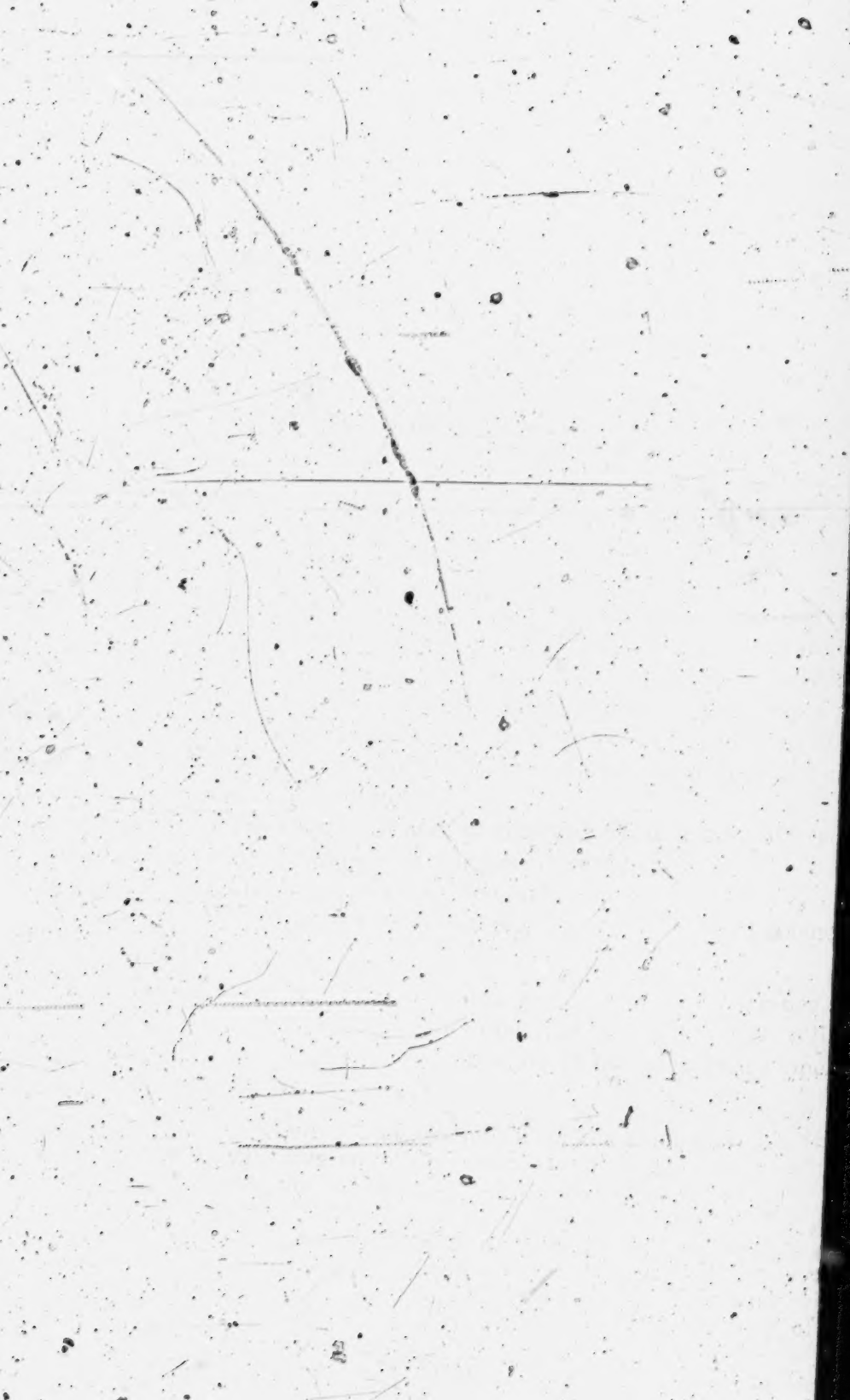
GEORGE SYLVESTER VIERECK, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

APPENDICES TO THE BRIEF FOR THE UNITED STATES



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APPENDIX A

STATUTES INVOLVED

The Act of June 8, 1938, c. 327 (52 Stat. 631), entitled "AN ACT To require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes," as amended by the Act of August 7, 1939, c. 521 (53 Stat. 1244), U. S. C., Title 22, §§ 611–616, provided:

That as used in this Act—

(a) The term "person" means an individual, partnership, association, or corporation;

(b) The term "United States" includes the United States and any place subject to the jurisdiction thereof;

(c) The term "foreign principal" includes the government of a foreign country, a political party of a foreign country, a person domiciled abroad, any foreign business, partnership, association, corporation, or political organization, or a domestic organization subsidized, directly or indirectly, in whole or in part by any of the entities described herein;

(d) The term "agent of a foreign principal" means any person who acts or engages or agrees to act as a public-relations counsel, publicity agent, or as agent, servant, representative, or attorney for a foreign principal, and shall include any person who receives compensation from or is under the direction of a foreign principal: *Provided, however,* That such term shall not include—

(1) a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States; nor

(2) any official of a foreign government recognized by the United States as a government other than a public-relations counsel or publicity agent or a citizen of the United States, whose status and the character of whose duties as such official are of record in the Department of State of the United States; nor

(3) any member of the staff of or person employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States, other than a public-relations counsel or publicity agent, whose status and the character of whose duties as such member or employee are of record in the Department of State of the United States; nor

(4) any person performing only private, nonpolitical, financial, mercantile, or other activities in furtherance of the bona fide trade or commerce of such foreign principal; nor

(5) any person engaged only in activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts.

(e) The term "Secretary" means the Secretary of State of the United States.

SEC. 2. Every person who is now an agent of a foreign principal shall, within thirty days after this Act takes effect, and every person who shall hereafter become an agent of a foreign principal shall forthwith file with the Secretary a registra-

tion statement, under oath, on a form prescribed by the Secretary which shall set forth—

(a) The name, business address, and residence address of the registrant;

(b) The name of the foreign principal or other person or organization for which such person is acting as agent;

(c) A copy of all contracts of employment under which such person acts or agrees to act as such agent, if written, or a full statement of the terms and conditions thereof, if oral;

(d) The date when each such contract was made, the date of commencement of activity thereunder, and the period during which such contract is to be in effect;

(e) The compensation to be paid, if any, and the form and time of payment, under such contract;

(f) The name of every foreign principal, or other person or organization which has contributed or which has promised to contribute to the compensation provided in such contract; and

(g) If the registrant be a partnership, association, or corporation, a true and complete copy of its charter, articles of incorporation, copartnership, association, constitution, and bylaws, and any other instrument or instruments relating to its organization, powers, and purposes.

SEC. 3. Every person who has filed a registration statement required by section 2 shall, within thirty days after the expiration of each period of six months succeeding the first filing, file with the Secretary a statement under oath, on a form prescribed by the Secretary which shall set forth with respect to such preceding six months' period—

(a) Such facts as may be necessary to make the information required under section 2 hereof accurate and current with respect to such period;

(b) The amount and form of compensation received by such person for acting as agent for a foreign principal which has been received during such six months' period either directly or indirectly from any foreign principal; and

(c) A statement containing such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period.

SEC. 4. The Secretary shall retain in permanent form all statements filed under this Act, and such statements shall be public records and open to public examination and inspection at all reasonable hours, under such rules and regulations as the Secretary may prescribe: *Provided,* That the Secretary is hereby authorized to withdraw from the public records the registration statement of any person whose activities have ceased to be of a character which requires registration under the terms of this Act.

SEC. 5. Any person who willfully fails to file any statement required to be filed under this Act, or in complying with the provisions of this Act, makes a false statement of a material fact, or willfully omits to state any material fact required to be stated therein shall, on conviction thereof, be punished by a fine of not more than $1,000 or imprisonment for not more than two years, or both.

SEC. 6. The Secretary is authorized and directed to prescribe such rules, regulations, and forms as may be necessary to carry out this Act.

SEC. 7. This Act shall take effect on the ninetieth day after the date of its enactment.

The Act of April 29, 1942 (Pub. 532, 77th Cong., ch. 263, 2d sess. [S. 2399]) provides, in part:

SEC. 2 (a) * * * The registration statement shall include the following, which shall be regarded as material for the purposes of this Act:

* * * * * *

(3) A comprehensive statement of the nature of registrant's business; a complete list of registrant's employees and a statement of the nature of the work of each, unless, and to the extent, this requirement is waived in writing by the Attorney General; the name and address of every foreign principal for whom the registrant is acting, assuming or purporting to act or has agreed to act; the character of the business or other activities of every such foreign principal, and, if any such foreign principal be other than a natural person, a statement of the ownership and control of each; and the extent, if any, to which each such foreign principal is supervised, directed, owned, controlled, financed, or subsidized, in whole or in part, by any government of a foreign country or foreign political party;

* * * * * *

(6) A detailed statement of every activity which the registrant is performing or is assuming or purporting or has agreed to perform for himself or any other person other than a foreign principal and which requires his registration hereunder;

* * * * * *

APPENDIX B

RULES AND REGULATIONS INVOLVED

Under the authority of the Act of June 8, 1938, c. 327 (52 Stat. 631), as amended by the Act of August 7, 1939, c. 521 (53 Stat. 1244), U. S. C., Title 22, §§ 611–616, the Secretary of State prescribed the following regulations on September 15, 1939:

PART I

Registration of Agents of Foreign Principals.

Chapter I—Authority

[The statute involved is set forth, *supra*, pp. 1–5.]

Under the authority of the aforementioned provisions of law and in compliance therewith, the Secretary of State prescribes the following regulations:

Chapter II—Definitions

As used in these regulations and forms, unless the context otherwise requires—

(1) The term *person* means an individual, partnership, association, or corporation.

(2) The term *Secretary* means the Secretary of State of the United States.

(3) The term *act* means the act approved June 8, 1938 (Public, No. 583, 75th Cong., 3d sess.), entitled "AN ACT To require the registration of cer-

tain persons employed by agencies to disseminate propaganda in the United States and for other purposes," as amended by the act approved August 7, 1939 (Public, No. 319, 76th Cong., 1st sess.).

(4) The term *section* means a section of the act.

(5) The term *regulations* means all rules, regulations, and forms prescribed by the Secretary pursuant to the act.

(6) The term *government of a foreign country* means any person or group of persons exercising sovereign political jurisdiction over any country, other than the United States, or over any part of such country, and includes any subdivision of any such group and any group or agency to which authority or functions are directly or indirectly delegated or permitted. Such term shall include any faction or body of insurgents within a country assuming to exercise governmental authority, whether such faction or body of insurgents has or has not been recognized by the United States.

(7) The term *political party of a foreign country* means any group of persons in a country other than the United States, having for an aim the establishment or the administration of a government or of a governmental system.

(8) The term *person domiciled abroad* means a person who has outside the United States a principal establishment or permanent home.

(9) The term *foreign business* means any entity organized or set up under a jurisdiction of a country other than the United States and having its principal place of business outside the United States, for the purpose of livelihood or profit.

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(10) The term *foreign partnership* means an association of two or more persons formed outside the United States to engage jointly in any enterprise or undertaking.

(11) The term *foreign association* means an unincorporated entity or group of persons formed outside the United States and acting for a common purpose.

(12) The term *foreign corporation* means a legal entity created by or under the laws of a country other than the United States.

(13) The term *foreign political organization* means a group of persons organized and existing outside the United States which is engaged in political activity or in any activity devoted in whole or in part to the establishment or the administration of a government or of a governmental system.

(14) The term *public-relations counsel* means any person who directly or indirectly informs, advises, or in any other way represents a principal in any matters pertaining to political interests or public relations or public policy: ***Provided, however,*** That this term shall not be held to apply to any person by reason of his being engaged in bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts, nor to any person performing only private, nonpolitical, financial, mercantile, or other activities in furtherance of bona fide trade or commerce as such terms are defined in these regulations.

(15) The term *publicity agent* means any person who is directly or indirectly engaged in the placing or disseminating within the United States of oral,

written, or pictorial information or matter of any kind for publication in any manner, including publication through advertising, books, periodicals, newspapers, lectures, broadcasts, moving-picture showings, or otherwise: *Provided, however,* That this term shall not be held to apply to any person by reason of his being engaged in the dissemination of material, information, or ideas in furtherance of bona fide religious, scholastic, academic, or scientific pursuits or of the fine arts, nor to any person performing only private, nonpolitical, financial, mercantile or other activities in furtherance of bona fide trade or commerce as such terms are defined in these regulations.

(16) The term *duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United Staes* shall include any representaive of a foreign government who functions as a diplomatic or consular officer in the United States and whose diplomatic or consular status is of record in the Department of State of the United States.

(17) The term *private activities in furtherance of bona fide trade or commerce* means activities ordinarily and customarily performed by persons for private livelihood or profit, as distinguished from activities of a political or other character, whether or not in the guise of trade or commerce.

(18) The term *nonpolitical activities in furtherance of bona fide trade or commerce* means such activities as are religious, educational, professional, scientific, or related to the fine arts, which do not in any essential respect relate to the establishment or

conduct of a government or relations between one government and another.

(19) The term *financial activities in furtherance of bona fide trade or commerce* means activities in which exchange of money or its equivalent is involved through the normal channels of finance, and includes the normal incidents of such transactions.

(20) The term *mercantile activities in furtherance of bona fide trade or commerce* means activities directly concerned with the business of procuring, buying, selling, merchandising, warehousing, forwarding, transporting, or processing goods, products, or property of any kind.

(21) The term *other activities in furtherance of bona fide trade or commerce* as used in subsection (d) of the first section of the act, means services rendered in connection with private activities, nonpolitical activities, financial activities, or mercantile activities as herein defined.

(22) The term *furtherance of bona fide trade or commerce* means engaging in good faith in the lawful exchange of commodities, services, or property of any kind. Such term shall not include any political activities or activities involving the dissemination of information not exclusively concerned with the lawful exchange of commodities, services, or property.

(23) The term *registration statement* means the statement submitted to the Secretary for filing pursuant to the terms of the act and includes all documents and papers supplementary thereto.

(24) The term *registrant* means the person named in the registration statement and in whose behalf the registration statement is submitted to the Secretary for filing.

Chapter III—Outline of Act

The act requires the registration of:

any person who *acts* or *engages to act* or *agrees to act* as:

public-relations counsel,
publicity agent,
agent,
servant,
representative,
attorney for, or

any person who receives compensation from, or is under the direction of:

the government of a foreign country,
a political party of a foreign country,
a person domiciled abroad,
a foreign business,
a foreign partnership,
a foreign association,
a foreign corporation,
a foreign political organization or a domestic organization subsidized directly or indirectly in whole or in part by any of the above.

The *only* persons within these categories exempt from the requirement of registration under the act are:

persons who function in the United States as diplomatic or consular officers and whose diplomatic or consular status is of record in the Department of State of the United States,

persons performing only:

private activities in furtherance of bona fide trade or commerce,
nonpolitical activities in furtherance of bona fide trade or commerce,
financial activities in furtherance of bona fide trade or commerce,

mercantile activities in furtherance of bona fide trade or commerce,
other activities in furtherance of bona fide trade or commerce, or
activities in furtherance of bona fide religious, scholastic, academic, or scientific pursuits, or of the fine arts,

and persons whose status is described in either of the following two paragraphs:

(1) Any official of a foreign government recognized by the United States as a government, other than a public-relations counsel or publicity agent or a citizen of the United States, whose status and the character of whose duties as such official are of record in the Department of State of the United States.

(2) Any member of the staff of or person employed by a duly accredited diplomatic or consular officer of a foreign government who is so recognized by the Department of State of the United States, other than a public-relations counsel or publicity agent, whose status and the character of whose duties as such member or employee are of record in the Department of State of the United States.

Chapter IV—Section 2 of the Act

(1) Every person required to register under the terms of section 2 of the act and regulations issued pursuant thereto, shall submit to the Secretary a registration statement on a form similar to that printed below. Registration statements must be signed and sworn to before a notary public or other person authorized by law to administer oaths before they are transmitted to the Secretary of State.

Blank forms will be furnished by the Secretary upon request.

[Form of Registration Statement appears at pp. 20–23 of the Record.]

(2) Registration statements should be in English. In a foreign language, they must be accompanied by an English translation, certified under oath by the translator, before a notary public or other person authorized by law to administer oaths for general purposes, as a true and accurate translation. The statements, with the exception of signature, should be typewritten but will be accepted if written legibly in ink.

(3) All spaces in the registration statement form must be properly filled in. Registration statements found not to be in proper form or lacking in essential details will not be accepted by the Secretary for filing, and such registration statements shall not be deemed to have been filed in compliance with the act.

(4) Where space in the registration statement form does not permit full answers to questions, the information required may be set forth in supplementary papers incorporated by reference in the registration statement and submitted therewith. Supplementary documents and papers must be referred to in the principal statement in chronological or other appropriate order and be described in such manner that they can be easily identified.

(5) Acceptance by the Secretary of a registration statement submitted for filing shall not necessarily signify a full compliance with the act on the part of the registrant, and such acceptance shall not preclude prosecution as provided for in the act

for a false statement of a material fact or the willful omission of a material fact required to be stated therein.

(6) The date on which a registration statement, executed in full compliance with the act and regulations, is received by the Secretary for filing, shall be considered the date of the filing of such registration statement pursuant to the act.

(7) Papers and documents already filed with the Secretary pursuant to the act may be incorporated by reference in any registration statement subsequently submitted to the Secretary for filing, provided such papers and documents are adequately identified in the registration statement in which they are incorporated by reference.

(8) Every registration statement executed and submitted to the Secretary by or on behalf of a partnership, association, or corporation, shall contain or be accompanied by a concise statement of the applicable provisions of the partnership agreement, articles of incorporation, bylaws or similar documents, indicating the right of the person who signs and submits the registration statement for filing to take such action on behalf of the partnership, association, or corporation, and a statement under oath that all such requirements have been complied with and that the person signing and submitting the registration statement is fully authorized to do so.

(9) A separate registration statement, under the act, must be filed with the Secretary by each person required to register.

(10) The Secretary should be notified promptly upon the cessation of the agency or activity by virtue of which a person has been required to file a

registration statement or submit information to the Secretary pursuant to the act and regulations prescribed thereunder.

(11) The filing of a registration statement by a partnership, association, or corporation shall not preclude the necessity of the filing of a similar registration statement, as required under the act, by such individual members, employees, associates, and affiliates of such registrant, as are required to register under the act.

(12) Agents of foreign principals who engage, whether or not on behalf of their foreign principal, in activities not included among the exceptions set forth in the act and regulations shall be considered subject to the requirement of registration.

(13) Registration pursuant to the act is required in the case of agents of foreign principals only. Subagents are not considered subject to the requirement of registration. A subagent is considered to be a person who is not engaged in any activities of a responsible character and who acts under the immediate and direct supervision of a registered agent or whose name, address, and functions are set forth in the registration statement submitted by the agent.

(14) Branch offices or subsidiaries of a registrant engaged in the same activity as that of such registrant will not be required to file separate registration statements if their names and addresses are included in the registration statement filed by the registrant pursuant to the act.

(15) Subsidiary or branch agencies of foreign entities in the United States are considered as occupying a dual status, i. e., that of a foreign prin-

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cipal and that of an agent of a foreign principal, and hence in their latter capacity are required to register if engaged in activities of a character not specifically excepted by the terms of the act and regulations. Officers of such agencies, however, need not register if their names and positions are indicated in the registration statement submitted by the agency.

(16) Associations and organizations, the membership of which includes one or more foreign principals, shall, to the extent of such foreign membership, be considered agents of foreign principals, and hence subject to the requirement of registration pursuant to the act unless their activities are of a character specifically excepted by the terms of the act and regulations.

(17) Activities connected in any way with the establishment or conduct of a foreign government shall not be considered to fall within any of the exceptions described in paragraphs (14) to (22), inclusive, of chapter II, part I, of the regulations, and persons undertaking to engage in such activities shall be considered subject to the requirement of registration.

(18) The status of officials of foreign governments and members of the staff of or persons employed by duly accredited diplomatic or consular officers of foreign governments, claiming exemption from the requirement of registration under the provisions of the first section of the act, should be regularized by a notification addressed to the Secretary of State. Such notification must include the full name, nationality, business and residence addresses of the person claiming exemption from the requirement of registration under the act, to-

gether with the name of the foreign government being served, a detailed statement of the present and proposed activities of such person, and an indication of the date of assumption of duties in the United States and the approximate duration thereof.

(19) Notification under paragraph (18) above must be renewed whenever the purpose, scope, or nature of the agency described therein is changed, and in any case every 12 months throughout the duration of the agency.

(20) Persons who have submitted information in full compilance with the provisions of paragraph (18) above, shall be considered to have complied with the provisions of the act of June 15, 1917 (40 Stat. 226; 22 U. S. C. 233), so far as such provisions relate to the requirement of notification to the Secretary of certain agents of foreign governments in the United States.

(21) The Secretary of State should be informed promptly upon the termination of activities described in notifications submitted pursuant to the provisions of paragraph (18) above.

(22) The Secretary may withdraw from the public records the registration statement of any person whose activities have ceased to be of a character which requires registration under the terms of the act. Requests for such withdrawals shall be submitted to the Secretary in the form of an affidavit subscribed and sworn to before a notary public, identifying the registration statement, the withdrawal of which is desired, and stating that the agency relationship described therein has been terminated and that the activities of the registrant

under such agency relationship have ceased. Registration statements which are withdrawn from the public records under the provisions hereof will be retained in the permanent files of the Department of State.

Chapter V—Section 3 of the Act

(1) Every person required to submit statements to the Secretary for filing in compliance with the terms of section 3 of the act and under the regulations issued pursuant to the act shall submit such statements under oath on a form similar to that printed below. Blank forms will be furnished by the Secretary upon request.

(2) The regulations set forth under chapter IV, part I, hereof, with respect to registration statements submitted to the Secretary under section 2 of the act, shall apply with equal force and effect to statements required to be submitted to the Secretary for filing under section 3 of the act.

[Form of Supplemental Registration Statement appears at pp. 26–30 of the Record.]

Chapter VI—Inspection of Registration Statements

(1) Registration statements filed with the Secretary pursuant to the act will, with the exception of statements withdrawn under the provisions of paragraph (22), chapter IV, part I, above, be available for public inspection in the Department of State, Washington, D. C., during all business hours, i. e., from 9 a. m. to 4:30 p. m. on each business day excepting Saturday, and from 9 a. m. to 1 p. m. on Saturdays.

APPENDIX C

CHARGE TO THE JURY

(Tr. 1570–1616)

THE COURT: Ladies and gentlemen of the jury, in the consideration of the indictment and of the several counts thereof, we are concerned with an Act of Congress commonly known as the "McCormick Act." It may be helpful for the jury for me to make brief reference to the legislative history of that Act, the Act which is here involved.

The House of Representatives in the 73rd Congress passed a House Resolution which has pertinence here:

> *Resolved,* That the Speaker of the House of Representatives be and is hereby authorized to appoint a special committee to be composed of seven members for the purpose of conducting an investigation of;
>
> 1. The extent, character and object of Nazi propaganda activities in the United States.
>
> 2. The diffusion within the United States of subversive propaganda that is instigated from foreign countries and attacks the principles of the form of Government as guaranteed by our Constitution. And,
>
> 3. All other questions in relation thereto that would aid Congress in any necessary remedial legislation.

The special committee appointed by the Speaker of the House of Representatives, by name known

as the "McCormick Committee"—the committee taking the name of its chairman—after extensive hearings which are reported in many pages of testimony before the McCormick Committee, that committee after investigating over nine months in its final report dated February 15, 1935, found that this country, "has been flooded with propaganda material and that such propaganda literature from various alien organizations outside of the United States which were engaged in un-American propaganda activity in an effort to gain adherence and to influence the political opinions of many of our people, and also to influence, if necessary and possible our Government policies."

It further found that all kinds of efforts and influences short of violence and force were used by foreign Governments and their various agencies to obtain their desired objective, which was to consolidate persons into one group subject to dictation from abroad, in distinct violation of every known American principle.

Furthermore, according to the McCormick Committee this foreign political propaganda was not directed merely at adults, but also at children who were taught to believe that the principles of Government taught by the foreign dictators were superior to the principle of our Government.

Moreover, the committee found that American firms and American citizens as individuals, sold their services for express propaganda purposes making their contacts with and accepting compensation from business firms.

The McCormick Act with which we are now concerned was the result of the public hearing and

the recommendations of the McCormick Committee, and was designed to remedy some of the ills which that committee had reported to the House of Representatives.

The purpose of the legislation was to require unknown agencies who are in the United States for propaganda purposes to register with the Secretary of State. It was intended that the legislation should relate to political propaganda, to persons who were engaged by a foreign company, foreign agents or connected with a foreign government engaged in political propaganda, and to those who are engaged in propaganda in this country connected with some particular country or political party of a country, or some firm, some group of business of the particular country who is using this as a means for that particular country or political party to hide its identity.

The committee maintained that the Congress and the people of the United States are entitled to have notice of any person who is in the United States or who employs any person for the purpose of disseminating political propaganda in the United States.

The committee sought through its Bill to determine through the instrumentality of registration with the Secretary of State, those activities of persons who are engaged by a foreign government directly or indirectly, to advise them on what methods or what is the best method to employ public propaganda, or who are engaged for the purpose of disseminating political propaganda in the United States.

It was the purpose of Congress to bring out in the open information as to who is disseminating

political propaganda in the United States, the purposes of such propaganda information which the Congress thought the American public is entitled to have.

The Bill as enacted into law was designed to accomplish the ends and aims of the McCormick Committee.

You are now told as a matter of law that through the passage of the McCormick Act the Congress sought to force propagandist agents representing foreign principals to come out in the open in their activity; to make known to the American public those who are so engaged in this country by foreign agencies, to spread doctrines alien to our Democratic form of Government; to make known to the American public the sources of any such efforts; the sources that promote and pay for the spreading of such foreign propaganda, and to label the sources of such propaganda; to publicize the nature of a subversive or other similar activity of such foreign propaganda; to deter the spread of such pernicious propaganda by the spotlight of publicity resulting from the registration with the Secretary of State.

In seeking to attain these ends it was the intent of Congress, therefore, that the following persons should be required to register with the State Department and to supply information about their political propaganda activities, their employers and the terms of their contract. All persons who are in the United States for political propaganda purposes; aliens coming to or in the United States for propaganda purposes of a political nature; American citizens who accept foreign political propaganda employment.

You are further told as a matter of law that the terms "Foreign Political Propaganda, propaganda purposes of a political nature and political propaganda, mean propaganda aimed toward establishing in the United States a foreign system of Government, group action of a nature foreign to our institutions of Government; propaganda for the purpose of influencing American public opinion on a political question.

Futhermore, propaganda and foreign propaganda are implicitly defined as spreading doctrines alien to our Democratic form of Government; spreading by word of mouth or by the written words the ideology, the principles and the practices of other forms of Government and the things for which they stand, arbitrarily aiming to inculcate persons in the United States with those principles and teachings which seek to foster un-American activity; to influence the external and internal policies of this country and to violate the letter and the spirit of the International Law, as well as the Democratic basis of our own American Institution of Government.

Accordingly, it is clearly apparent from the foregoing legislative history what types of activity the Congress intended should be made public information through the medium of registration.

It stands without dispute in the evidence that on September 26, 1939, the defendant, George Sylvester Viereck, filed a registration statement with the Secretary of State as the agent of certain foreign principals.

Section 3 of the Act provides, "That every person who has filed a registration statement required

by the Act shall, within 30 days after the expiration of each period of 6 months succeeding the first filing, file with the Secretary of State a statement under oath on a form prescribed by the Secretary, which shall set forth with respect to such preceding 6 months' period, such facts as may be necessary to make the information required by the Act accurate and current with respect to such period; a statement containing such details required under the Act as the Secretary shall fix of the activities of such person or agent of a foreign principal during such 6 months' period."

Section 4 of the Act provides that "The Secretary shall retain in permanent form all statements filed under the Act, and that such statements shall be public records and open to public examination and inspection at all times at reasonable hours."

Section 6 of the Act provides that "The Secretary is authorized and directed to prescribe such regulations and forms as may be necessary to carry out the Act."

By the form prescribed by the Secretary for supplemental statements, the registrant is required to make a comprehensive statement of the nature of his business.

Section 5 of the Act provides that, "Any person who willfully fails to file any statement required to be filed under the Act or in complying with the provisions of the Act makes a false statement of a material fact or willfully omits to state any material fact required to be stated therein, shall be punished."

The indictment in this case is in five counts, but you are advised that the trial has proceeded upon

three counts only, they being count 2, count 3 and count 5. You will give no concern to the charges contained in counts 1 and 4.

You are further told, that counts 2, 3, and 5 relate to supplemental statements filed by the defendant on April 23, 1940; October 25, 1940 and April 25, 1941.

In count 2 it is charged that the defendant George Sylvester Viereck unlawfully, willfully, and knowingly omitted to state and set forth in his supplemental statement filed on April 23, 1940, a material fact; that during the period from September 26, 1939, to April 23, 1940, as a part of his business and activities, the defendant:

Advised, consulted, and informed, directly and indirectly, divers persons in matters pertaining to political interests, public relations and public policy; and

Engaged, directly and indirectly, in placing and disseminating within the United States of oral and written information and matter for publication by writing, editing, preparing and revising speeches, public addresses and written matter pertaining to political interests, public relations and public policy, and which were thereafter printed and published in whole and in part in books, periodicals, and newspapers and in the Congressional Record, and also were disseminated by means of radio broadcasts; and

Advised, consulted, and informed, directly and indirectly, one Prescott Dennett, and divers other persons, in matters pertaining to political interests, public relations and public policy, aiding, abetting and assisting the said Prescott Dennett and

divers other persons, in organizing and setting up a certain committee known as and by the name and style of "Make Europe Pay War Debts Committee," and by contributing large sums of money for the maintenance of and to defray the expenses of the said committee, it being the plan and purpose, among others, of the defendant, George Sylvester Viereck, to use the "Make Europe Pay War Debts Committee," the said Prescott Dennett and divers other persons, to disseminate, distribute and place certain oral and written information and matter for publication through newspapers, radio broadcasts, periodicals and in other manner in order to influence, persuade, bend and mold American public opinion in matters pertaining to political interests, public relations and public policy; and

Wrote, edited, prepared and revised written and printed matter, articles and essays dealing with political interests, public relations and public policy and caused the same to be printed, published and distributed in magazines, periodicals and newspapers under false and fictitious names including among others James Burr Hamilton, George F. Corners, Donald Furtherman Wicketts, William L. Stidger, and Dr. Claudius Murchison, for the purpose, among others, of concealing from the public of the United States the true name and identity of the writers.

Count 3 charges that in his supplemental statement filed October 25, 1940, the defendant unlawfully, willfully, feloniously and knowingly omitted to state and set forth in said supplemental registration statement a material fact; that during the period from April 23, 1940, to October 25, 1940, the defendant:

Advised, consulted and informed, directly and indirectly, divers persons in matters pertaining to political interests, public relations and public policy; and

Engaged, directly and indirectly, in the placing and disseminating within the United States of oral and written information and matter for publication in that, among other things, the said defendant, George Sylvester Viereck, wrote, edited, prepared, and revised speeches, public addresses and written matter pertaining to political interests, public relations and public policy, and which were thereafter printed and published in whole and in part in the Congressional Record and other books, periodicals and newspapers, and also were disseminated by means of radio broadcasts; and

Advised, consulted, and informed, directly and indirectly, one Prescott Dennett, and divers other persons, in matters pertaining to political interests, public relations and public policy by aiding, abetting and assisting the said Prescott Dennett and divers other persons in the operation and work of certain committees known as and by the name and style of "Make Europe Pay War Debts Committee" and "Island for War Debts Committee" and by contributing large sums of money for the maintenance of and to defray the expenses of the said committees, it being the plan and purpose, among others, of the defendant, George Sylvester Viereck, to use the "Make Europe Pay War Debts Committee" and the said "Islands for War Debts Committee" the said Prescott Dennett and divers other persons to disseminate, distribute by mail under Congressional franking privilege and otherwise

certain speeches and public addresses delivered on the floor of Congress and elsewhere by present and former members of both houses of the Congress of the United States, and to place certain oral and written information and matter for publication through newspapers, radio broadcasts, periodicals and in other manner in order to influence, persuade, bend and mold American public opinion in matter pertaining to political interests, public relations, and public policy; and

Engaged, directly and indirectly, within the United States of America, in the distributing, disseminating and placing of oral and written information and matter pertaining to political interests, public relations and public policy for publication through newspapers, periodicals, manuscripts, books and pamphlets through the medium of a publishing house known as and by the name of Flanders Hall, Inc., a New Jersey corporation, having its principal place of business at Scotch Plains, New Jersey, which corporation and the officers and operations of which the defendant, George Sylvester Viereck, financed, controlled and directed and to which he, the said George Sylvester Viereck, furnished manuscripts and other written and printed material for the purpose, among others, of having the said manuscripts and other written and printed material published, printed, sold and distributed by the said Flanders Hall, Inc., and by others, within the United States of America; and

Published, printed, sold, distributed and disseminated and caused to be printed, published, sold, distributed and disseminated by mail and otherwise under the imprint of the said Flanders Hall,

Inc., publishers, books, pamphlets, manuscripts, and other material pertaining to political interests, public relations and public policy, including in whole and in part translations and adaptations from books, pamphlets, manuscripts, and other matter issued and distributed by and through the Deutsche Informationsstelle, Berlin, Germany, and also books, pamphlets, manuscripts, and other matter written and printed in the United States, including among others the following:

Lord Lothian versus Lord Lothian; The Hapless Boers; Democracy on the Nile; Misadventure in Scandinavia; War Against Women and Children; The Whipping Block; Turkey Reborn; Inhumanity Unlimited; What About Africa?; Doublecross in Palestine; for the purpose, among others, of influencing, persuading, bending and molding American public opinion in matters pertaining to political interests, public relations and public policy; and

Wrote, edited, prepared and revised written and printed matter, articles and essays dealing with political interests, public relations and public policy and caused the same to be printed, published, and distributed in magazines, periodicals and newspapers under false and fictitious names including among others James Burr Hamilton, George F. Corners, Donald Furtherman Wicketts, William L. Stidger, and Dr. Claudius Murchison, for the purpose, among others, of concealing from the public of the United States the true name and identity of the writer.

Count 5 charges that in his supplemental registration statement filed April 25, 1941, the defendant unlawfully, willfully, feloniously and know-

ingly omitted to state and set forth in his said supplemental registration statement a material fact, to-wit: That the defendant during the period from March 17, 1941, to April 25, 1941, the defendant Viereck:

Wrote, revised, edited and prepared manuscripts, documents and other written matter, which said manuscripts, documents, and other written matter pertained to political interests, public relations and public policy, and which said manuscripts, documents and other printed matter and portions thereof were thereafter inserted and printed and published in whole and in part in the Congressional Record; and which said manuscripts, documents and other printed matter were thereafter published in whole and in part by Flanders Hall, Inc.

Consulted, conferred and advised with divers persons in connection with speeches, public addresses, radio broadcasts, manuscripts, pamphlets, books, periodicals and other matter pertaining to political interests, public relations and public policy; and

Advised, consulted and informed, directly and indirectly, one Prescott Dennett and divers other persons in matters pertaining to political interests, public relations and public policy by aiding, abetting and assisting the said Prescott Dennett and divers other persons in the operation and work of certain committees known as and by the name and style of "Make Europe Pay War Debts Committee," "Islands for War Debts Committee," and "War Debts Defense Committee," and by contributing large sums of money for the maintenance of

and to defray the expenses of the said committees; it being the plan and purpose, among others, of the defendant, George Sylvester Viereck, to use the "Make Europe Pay War Debts Committee," "Islands for War Debts Committee," "War Debts Defense Committee" and Prescott Dennett and divers other persons to the Grand Jurors unknown to disseminate, distribute by mail under Congressional franking privilege and otherwise certain speeches and public addresses delivered on the floor of Congress and elsewhere by present and former members of both houses of the Congress of the United States and to place certain oral and written information and matter for publication through newspapers, radio broadcasts, periodicals and in other manner in order to influence, persuade, bend and mold American public opinion in matters pertaining to political interests, public relation and public policy; and

Engaged, directly and indirectly, within the United States, in distributing, disseminating and placing of oral and written information and matter for publication in the form of manuscripts, books and pamphlets through the medium of a publishing house known as and by the name of Flanders Hall, Inc., a New Jersey corporation, having its principal place of business at Scotch Plains, New Jersey, which corporation and the officers and operations of which the defendant, George Sylvester Viereck, financed, controlled and directed and to which he, the said George Sylvester Viereck, furnished certain manuscripts and other material for the purpose among others of having the said manuscripts and other material published,

printed, sold and distributed by the said Flanders Hall, Inc., and by others within the United States of America; and

Published, printed, sold, distributed and disseminated and caused to be printed, published, sold, distributed and disseminated by mail and otherwise, books, pamphlets, manuscripts and other material, including in whole and in part translations and adaptations from books, pamphlets, manuscripts and other matter issued and distributed by and through the Deutsche Informationsstelle, Berlin, Germany, and also books, pamphlets, manuscripts and other matter written and printed in the United States, including among others the following:

Lord Lothian versus Lord Lothian; The Hapless Boers; Democracy on the Nile; Misadventure in Scandinavia; War Against Women and Children; The Whipping Block; Turkey Reborn; Inhumanity Unlimited; What About Africa; Doublecross in Palestine, for the purpose, among others, of influencing, persuading, bending and molding American public opinion in matters pertaining to political interests, public relations and public policy; and

Wrote, edited, prepared and revised written and printed matter, articles and essays dealing with political interests, public relations and public policy and caused the same to be printed, published, and distributed in magazines, periodicals and newspapers under false and fictitious names including among others James Burr Hamilton, George F. Corners, Donald Furtherman Wicketts, William L. Stidger, and Dr. Claudius Murchison, for the purpose, among others, of concealing from

the public of the United States the true name and identity of the writer.

I have given to you the substance of the charges made in the counts of the indictment which you are concerned with. To these charges, as relating to each count of the indictment which is for your consideration, you are told that the defendant has entered a plea of not guilty.

I think I will have to have a little rest before I go on with this. I will excuse the jury now and ask you to keep in mind the admonition and be back in one hour.

(At 12:45 o'clock P. M. a recess was taken to 1:45 o'clock P. M.)

Afternoon Session

(The proceedings were resumed, pursuant to the noon recess, at 1:45 o'clock P. M.)

Mr. COHALAN. Your Honor, would you allow me just for a brief moment before you resume, to come up to the bench and approach your Honor?

The COURT. Yes.

(Side-bar conference was had as follows:)

Mr. COHALAN. There are two oversights on my part that I would like to call to your attention. I neglected this morning to ask you, or yesterday afternoon to ask you to let me have an exception noted on the record to a certain portion of Mr. Hickey's summation. It was an oversight that in lieu of the circumstances I would like your Honor to let me have that, if you would.

I refer specifically to page 1496 of the record where the following statement took place:

> Now, you further heard the Webbers' testimony concerning this defendant's own ad-

> mission that he had organized these patriotic committees here in Washington, that they were his idea.
>
> Now, I submit that that statement remains absolutely uncontradicted. You can draw whatever inference you desire from that character of testimony.

I have studied this, your Honor. Frankly, I do not know whether or not—how close this comes to calling the attention of the jury inferentially, at least, to the fact that the defendant did not take the stand in his own defense.

As I say, I do not know how close it does come, but I would like your Honor to give me the privilege of an exception as related to that statement, on the ground it does tend to infer.

The COURT. Let me look at it just a moment. What do you say about it?

Mr. HICKEY. Well, I merely want to say this, your Honor. I did not intend by that statement to call attention to the defendant's not taking the stand. I merely was calling attention to the fact that even on cross examination of those witnesses or in cross examination of any witnesses or by any testimony which was adduced in this trial, that statement still remained uncontradicted.

I do not think that it comes within the contemplation of the Leskowitz case against Cohen, the failure of the defendant to take the stand.

The COURT. The trouble is, if I give you an exception to that, the record is silent as to the explanation which Mr. Hickey would then have the privilege to make, and which he now has indicated.

Mr. COHALAN. Well, I think he would be entitled to make an explanation to your Honor.

The COURT. Yes.

Mr. COHALAN. I still would like the exception noted, if your Honor will accord it to us.

The COURT. Well, you have brought it to my attention. I think in view of the circumstances and the fact that Mr. Hickey would have no opportunity of elaborating, that I shall deny the exception. You may have an exception to the denial of your exception. That will give you as much record as you need.

Mr. COHALAN. Now, another thing, this morning, at the conclusion of Mr. Maloney's summation, I did not seize the opportunity of seeking an exception to certain things that he said that were outside the indictment, and tended to arouse the emotions of the jury in a manner that I considered improper, so far as the defendant is concerned.

Will your Honor allow me to note an exception to that fact on the record?

The COURT. Well, I think I must deny the exception upon the same ground, if it had been timely he might have wished to make some explanation of the remarks which you now complain of. You may have an exception to my denial of that exception.

Mr. MCGUIRE. Your Honor, there is no exception we might have made at that time which would have removed from the minds of the jury what he had said; no explanation would explain away what he said.

The COURT. No, not now.

Mr. MCGUIRE. Or, even then.

The COURT. But, if an exception had been timely made, whatever wrong inference might

be drawn, it may have been corrected by an explanation.

Mr. COHALAN. The only reason I am coming up here and asking you, or one of the most important reasons, is that I feel most strongly that this defendant should be accorded every protection that he is possibly entitled to under the circumstances. I am sure that your Honor agrees with me. I do not wish to think that because of my tardiness in taking exception that the defendant may have lost any advantage which would accrue to him if that exception had been promptly taken, and for that reason——

The COURT. Well, I do not see how it would give you more in the way of a record than the exception that you have to my denial.

Mr. COHALAN. Your denial to giving us an exception?

The COURT. Yes.

Mr. COHALAN. All right, thank you, sir.

(Counsel return to the counsel table.)

The COURT. Ladies and gentlemen of the jury, you are now told that at the outset in all criminal cases there is a presumption in law that the person who stands accused is not guilty of the offense with which he is charged; that presumption should remain in the minds of the jurors for the benefit of the defendant until it is overcome by proof which satisfies the jury beyond a reasonable doubt that he is guilty.

The burden of proof is upon the Government. This means that before you will be warranted in finding the defendant guilty the Government must prove, and you must find from the evidence beyond

a reasonable doubt, the truth of the allegations of the indictment as to all essential elements of the crime charged, and this proof, as I have indicated, must be to your satisfaction beyond a reasonable doubt.

A reasonable doubt, as the words themselves import, is a doubt in reason. It means such a doubt as will leave the jurors' mind after a full, fair, candid and impartial investigation of all the facts and circumstances shown in the evidence, so undecided that the juror is unable to say that he or she has an abiding conviction of the defendant's guilt; or, such a doubt as in the graver and more important transactions of life, would cause a reasonable and prudent person to hesitate and pause.

The words "reasonable doubt" must be given their usual and ordinary meaning. The doubt must not be trivial or whimsical or based upon grounds of conjecture. The doubt must not be sought after, for when it is such a doubt the law recognizes it arises fairly and naturally in the mind of the juror upon the full, fair consideration of all the facts and circumstances in evidence in the case. This doubt must arise out of the evidence or from a lack of existing evidence, and it must be a doubt which appears to you to be reasonable under the facts and circumstances of the case.

The Government does not claim that the defendant failed to file a registration statement with the Secretary of State as required by the Act or that he failed to file supplemental registration statements at the end of the various six months' periods. He did that. It is the theory and claim of the Government that the defendant was obliged under

the Act at the end of each six months' period to file a supplemental registration statement; that as a part thereof he was required by the law and by the regulations promulgated by the Secretary of State, to make a comprehensive statement of the nature of his business, and that he willfully omitted to do so.

The Government seeks to hold the defendant criminally liable for willful omission in his supplemental statements of material fact or facts necessary to constitute a comprehensive statement of the nature of his business.

The essential elements of the offense charged in each count of the indictment are these:

First; that the defendant in filing a supplemental statement failed to make a comprehensive statement of the nature of his business, in that he omitted to state some material facts substantially as charged in the indictment.

Second, that such omission was willful. If the Government has established each of these propositions to your satisfaction beyond a reasonable doubt, you will be warranted in finding the defendant guilty upon any count of the indictment to which such proof relates. If the Government has failed to so prove either of the propositions so stated as to any count of the indictment, you should find the defendant not guilty on such count.

You will be asked for a separate verdict on the second, third and fifth counts of the indictment. Perhaps I should give you this definition.

The omission of the defendant to state any material fact necessary to a comprehensive statement of the nature of his business was not criminal, un-

less such omission was willful. You are therefore told that willful, as used in the Act, implies knowledge that the defendant, as agent of a foreign principal, was required by the Act and the regulations of the Secretary of State to state in his supplemental registration statement any and all material facts necessary to make public as a matter of information, the nature of his business; and, having such knowledge the defendant had the deliberate intention of avoiding the requirements of the statute.

A material fact, within the meaning of the law, is a fact, the disclosure of which, is reasonably necessary to apprize the American public of the nature of the business of the registrant; a comprehensive statement of the nature of the business of the registrant within the meaning of the law is a statement of such material fact or collection of material facts as may be reasonably necessary to inform the American people of the nature of the business of the registrant; the business of the registrant within the meaning of the law comprises any and all gainful occupations or pursuits customarily followed by the registrant to gain a livelihood or to produce an income.

The Act does not in any way impair the right of freedom of speech or of free practice or other constitutional right. The American public may not be deprived of political information even though it be propaganda. There is no law to prohibit its dissemination among the people, but, as a matter of public policy, our Government and the people of the United States are entitled to know the sources of foreign political propaganda and

the person, persons or agencies carrying on the work and bearing the expense incident to its dissemination in the United States.

I now have before me certain prayers which have been asked by the Government, some of them have been granted by the Court. When I have completed the reading of those allowed for the Government I will take up certain prayers asked by the defendant and granted by the Court.

With respect to these prayers either for the Government or for the defense, you are told that no one prayer states all the law of the case. It states the law insofar as it goes, but not beyond that.

In order to have a comprehensive understanding on the law of the case it would be necessary for you to understand the propositions of law contained in the Government's prayers and in the prayers for the defendant, in connection with everything that is said by the Court in the Court's general charge to the jury.

Government's prayer No. 1 reads as follows:

> The indictment in this case is in three counts. Each of these counts constitutes a separate and distinct charge, the same as if each were contained in a separate and distinct indictment, and in your deliberation you are to consider each count separately.
>
> You may, after considering the evidence in this case, find the defendant guilty or not guilty on all three counts, or you may find him guilty on any one count and not guilty on other counts.

Government's revised prayer No. 2:

> The defendant is charged with having willfully failed in his supplemental registra-

tion statements filed with the Secretary of State on April 23, 1940, October 25, 1940, and April 25, 1941, to set forth certain material information which he was required by law to disclose.

One of the requirements established by the Secretary of State and set forth as Query No. 11 is that each registrant give a comprehensive statement of the nature of his business.

In answer to this requirement, defendant sets down the words "author and journalist," on each of the supplemental registration statements in question.

The indictment charges that the words "author and journalist" do not constitute a comprehensive statement of the nature of the business of this defendant, and that by so answering Query No. 11 it is charged in the indictment the defendant willfully omitted to state material facts which the law required him to state.

The indictment sets forth certain activities which defendant allegedly engaged in.

Those are the activities which I enumerated when presenting the substance of the indictment to you, and it will not be necessary for me here to repeat them.

If you find (1) that the defendant did the things charged by the Government in the indictment as a part of his business and (2) that such business constituted material information required by law to be disclosed, and (3) that the defendant willfully failed to disclose this material information in the supplemental registration statements, then you may find the defendant guilty as charged in each count of the indictment.

Government's prayer 2–A:

> It is for the jury to determine in the light of all the circumstances under which this law was passed and particularly in view of the fact that its avowed purpose is to compel full disclosure of activities of foreign propagandists whether when defendant stated "author and journalist" in response to query No. 11 he willfully intended to conceal from the Secretary of State and the American people his activities in connection with Flanders Hall, the so-called War Debt Committees, the mailing under Congressional frank of large quantities of reprints of so-called non-interventionist material, and the writing of all or part of certain speeches for members of the Congress, and to that end willfully omitted to include these activities in his response to Query No. 11.

Government's Prayer No. 3:

> In order to find the defendant guilty it is not necessary that you find that he willfully failed to disclose every one of the facts alleged in each count of the indictment. It is sufficient if he willfully failed to disclose any one of the facts set forth in each count of the indictment, if you also determine such fact to have been material information which the defendant should have disclosed in answer to the question "Comprehensive statement of nature of the business of registrant."

Government's Prayer No. 5:

> The Court further instructs you that the word "willfully" means "intentionally" as distinguished from "carelessly," "negligently" or "inadvertently." The word "willfully" means no more than that the

person charged with the duty knows what he is doing. It does not mean that in addition he must suppose that he is breaking the law.

Mistake of law is no defense.

If you find that the defendant did the things alleged in the indictment, and you also find those things to be material facts required to be disclosed in answer to the question "comprehensive statement of the nature of the business of registrant," and that the defendant willfully failed to disclose them, then you may find the defendant guilty even though you find that the defendant had some different view of the law and thought that the law did not apply to him.

Government's Prayer No. 6:

The burden of proving guilt rests upon the Government and must be sustained by evidence which sustains his guilt beyond a reasonable doubt. This burden rests upon the Government throughout the trial.

The term "reasonable doubt" means a doubt for which a good reason can be given in the light of all the evidence. It means a doubt which is substantial and not merely shadowy. It does not mean a doubt which is merely capricious or speculative. Neither does it mean a doubt borne of reluctance on the part of a juror to perform an unpleasant duty or a doubt arising out of sympathy for a defendant or out of anything other than a candid consideration of all the evidence presented.

Government's No. 7:

It is the duty of the Court to state the principles of law which are applicable, and it is also the Court's duty to decide all ques-

tions with respect to the admission and rejection of evidence.

The jury are the sole judges of the issues of fact and of the real truth of whatever is involved in those issues. It is also the Court's duty to assist the jury in so far as this can be done by referring to subsidiary questions of fact and to the evidence or state of evidence bearing upon them. But the jury should regard all expressions of the Court in this connection as made for the purpose of aiding the jury and not of directing it. If the Court's expressions are not in accord with the jury's understanding of the evidence or its reasonable import they should be rejected and effect is to be given by the jury to its own understanding and conclusion, for in the last analysis the jury are the sole and exclusive judges of all questions of fact.

Government's Prayer 8:

The jury is further advised as a matter of law by the Court that if you find that the defendant engaged in the activities set forth in the indictment, it is not necessary that you find that he engaged in such activities on behalf of his foreign principal or principals. It it sufficient if you find he engaged in the activities, whether on behalf of his foreign principal or principals or on his own behalf.

Government's Prayer No. 9:

It is not necessary for the Government to prove the guilt of the defendant beyond a possible doubt. If that were the rule few men, however guilty they might be, would be convicted. In this world of ours it is practically impossible for a person to be absolutely and completely convinced of any

fact which by its nature is not susceptible of mathematical certainty. In consequence, the law is such that in a criminal case it is enough that the defendant's guilt be established beyond a reasonable doubt—not all possible doubt.

Government's Prayer No. 10:

The jury is composed of twelve persons. While undoubtedly their verdict should represent the opinion of each individual juror, by no means does this mean that opinions may not be changed by conference in the jury room. The very objective of the jury system is to secure unanimity by a comparison of views and by arguments among the jurors themselves. Each juror should listen with a disposition to be convinced to the opinions and arguments of the others. It is not intended that a juror should go to the jury room with a fixed determination that the verdict shall represent his opinion only of the case at that moment. Nor is it intended that he should close his ears to the arguments of other jurors who are equally honest and intelligent.

Now, I take up the——

Mr. HICKEY. Your Honor, may we approach the bench for a moment?

The COURT. Yes.

(Side-bar conferenee was had as follows:)

Mr. HICKEY. Your Honor, I am not sure, but I do not recall your stating anything in your general charge to the jury regarding how they should determine materiality.

I think you intended to do that.

Mr. COHALAN. Yes, you did say something.

The COURT. I told them in a series of little statements what a material fact is; what a comprehensive statement is and what "business" means.

Mr. HICKEY. I see.

The COURT. I gave those three things.

Mr. HICKEY. I am sorry.

Mr. COHALAN. My understanding of your practice down here is that you read our charge first, you charge the jury in toto and then you ask us for anything we have to say?

The COURT. That is right.

(Counsel return to the counsel table.)

The COURT. A part of the defendant's prayer No. 1 has been refused by the Court. One part of it, however, has been granted. That I shall now read to the jury:

> The supplemental registration forms permit the use of the word "same" to be written into the appropriate spaces where the answers in the supplemental registration forms would be exactly the same as answers made to similar questions in a previous statement filed by the registrant with the Secretary of State.

Defendant's Prayer No. 4 reads as follows:

> During the period covered by this indictment, the dissemination of propaganda in this country by any foreign Government or by any foreign group or agency of any kind was not a crime.

Defendant's Prayer No. 5:

> The defendant here was registered as the agent of certain principals domiciled in Germany. During the periods covered by this indictment the relations between this country and Germany were tense. Although

we were then not in a state of war with Germany, the relationship was shrouded with an atmosphere of hostility and unfriendliness. These circumstances are to play no part in your consideration of the guilt or innocence of this defendant.

The mere fact of registration under the Act affords no ground for assuming that any person registered as an agent for a foreign principal, including this defendant, was engaged in an unpatriotic activity.

Defendant's Prayer No. 6:

The only object and purpose of an indictment in a criminal case is to inform the defendant of the nature and cause of the accusation against him. It does not amount to evidence against the defendant in the slightest degree whatever and the only purpose for which it can be considered by the jury is to determine the charge with which the defendant is accused. It is a mere accusation and it is incumbent on the Government to sustain the accusation by proof beyond a reasonable doubt.

Defendant's Prayer No. 7:

The defendant is presumed to be innocent of the charge made against him and that presumption exists in his favor and continues with him for his proper protection until the evidence adduced displaces such presumption. This is true not only as respects the accusation as a whole but as respects every material element of it. The presumption of innocence is not displaced merely because the evidence preponderates against the defendant. It must be more than that. The evidence must be of such a character as to establish guilt beyond a reasonable doubt.

Defendant's Prayer No. 8:

The Court instructs the jury that in this case the law raises no presumption against the defendant, but that the presumption of law is in favor of the innocence of the defendant, and in order to convict him of the crime alleged in the indictment, every material fact to constitute such crime must be proved beyond a reasonable doubt; and if the jury entertain any reasonable doubt upon any single fact or element necessary to constitute the crime, it is their duty to give the defendant the benefit of its doubt and render a verdict of not guilty.

Defendant's Prayer No. 9:

The jury are instructed in weighing the evidence in the case, that if the acts and conduct of the defendant are just as consistent with innocence as with guilt, then the defendant is entitled to the benefit of the presumption of innocence.

Defendant's Prayer No. 10:

The jury are instructed that if, after considering all the evidence in the case they feel that all the evidence is just as consistent with the innocence of the defendant as with his guilt, then their verdict should be not guilty as to the defendant.

In other words, if it is clear that reasonable minds could not differ on the fact that the testimony is consistent with innocence, if the testimony could be so construed among men of reasonable minds, the jury must find the defendant not guilty of the crime charged.

Defendant's Prayer No. 11:

The jury are instructed that the burden is not upon the defendant to prove his innocence, but upon the United States to prove his guilt beyond a reasonable doubt. And unless you find the defendant's guilt to be established beyond a reasonable doubt, you should find him not guilty and if you can reconcile all the testimony in the case with any reasonable hypothesis of the defendant's innocence, it is your duty to do so and in such event you should find the defendant not guilty.

Defendant's Prayer No. 12:

The burden of proving the defendant guilty of the crime charged in the indictment rests solely upon the Government and this burden must be sustained by evidence which establishes guilt beyond a reasonable doubt. This burden rests upon the Government throughout the entire trial.

Defendant's Prayer No. 13:

Reasonable doubt does not mean a mere doubt, but it means just what the words themselves indicate, that there is a doubt founded in reason and arising from the evidence; nothing extraneous, but from the evidence. Reasonable doubt is a real doubt arising from the evidence and based on reason; such a doubt as will leave the juror's mind, after a candid and impartial consideration of all the evidence so undecided that he is unable to say that he has an abiding conviction beyond a reasonable doubt of the defendant's guilt; or such a doubt as in the graver and more important transactions of life, would cause a reasonable and prudent man to hesitate and pause.

Defendant's Prayer No. 15:

The jury must decide the case upon the evidence that has been adduced before them, and not upon any personal knowledge of the facts which they possess, or which has been brought to their attention otherwise than by the witnesses and evidence during the course of the trial itself.

While it is the duty of each juror to discuss and consider the opinion of his fellow jurors, he must decide the case upon his own opinion of the evidence and upon his own judgment.

Defendant's Prayer No. 16:

If the evidence does not satisfy you beyond a reasonable doubt that the defendant is guilty; if the evidence does not overcome beyond a reasonable doubt, the presumption of innocence with which the defendant is clothed; if the evidence does not overcome beyond a reasonable doubt all of the reasonable hypotheses or explanations brought forward on his behalf, then you should return a verdict of not guilty, regardless of any consequences.

Defendant's Prayer No. 17:

Some of the evidence in this case is circumstantial. Circumstantial evidence is that evidence which tends to prove a disputed fact, by proof of other facts which have a legitimate tendency to lead the mind to the conclusion that the fact exists which is sought to be established.

The jury may find the defendant guilty upon circumstantial evidence, provided such evidence measures up to the standard required by law; that the rule as to circumstantial evidence stated briefly, is that cir-

cumstances relied on must point so unerringly to the guilt of the accused as to exclude every other reasonable hypothesis; that the circumstances relied upon must be proved to the satisfaction of the jury beyond a reasonable doubt; that the circumstances must be consistent with each other, and inconsistent with any other reasonable hypothesis except the guilt of the accused; and that they must point, as stated, so unerringly to the accused as to exclude every other reasonable hypothesis, except the hypothesis of guilt.

Defendant's Prayer No. 18:

Under the law it is entirely a matter of choice whether or not the defendant himself becomes a witness at his trial. He is not compelled to do so. His failure to testify does not create any presumption against him and such failure may not be construed unfavorably to him.

In this jurisdiction we divide the responsibility in cases of this kind between the Court and the jury. It is for the Court to direct the orderly proceedings of the trial; to rule upon questions of law as they arise in the conduct of the trial and upon the admissibility of evidence, and to declare the law of the case.

It is the duty of the jury to take the law as stated by the Court and apply that law to the facts and circumstances of the case as shown in the evidence.

It is the exclusive province of the jury to determine matters of fact and the questions of guilt or innocence.

In coming to your conclusion you should do so with an understanding of the law and your deliber-

ations should be utterly to the end that your verdict will be a just verdict.

You are the sole judges of the credibility of the witnesses and of the weight you will accord to the testimony of each of them. You should accord to individual witnesses and to the testimony given by them, that degree of credit and effect which in your honest judgment you think they ought to have, taking into consideration in so far as you are able to do so from the manner and appearance of the witness on the stand whether the testimony of that witness be frankly and honestly given; the apparent intelligence or lack of intelligence of the witness; his ability and opportunity to observe the facts that transpired within his presence, and his ability to remember what at a prior time he has observed, and his ability to express accurately and communicate to you through the medium of words that which passed within his observation.

Also, what if any interest the witness has in the outcome of the case and whether or not on that account he has colored in any way the facts relating to his testimony; and again whether or not there is manifested by any witness any bias, prejudice or feeling for or against the defendant, and if so, whether or not that has colored the testimony of such witness one way or the other.

Furthermore, you are told that if you find that any witness has knowingly testified falsely with respect to any matter material to the issues of this case and concerning which such witness might not reasonably be mistaken, you may, if you wish, reject all or any part of the testimony of such witness.

The rule of law, however, does not prevent you from giving weight to such part of the testimony of such witness as you may find to be trustworthy and reliable. Thus you may find parts of the testimony of the witness can be supported or corroborated by other evidence in the case which you may believe to be true, and thus, even though you might find other parts of such testimony to be untrue.

Gentlemen, if you have anything for the record you may come to the bench.

(Side-bar conference was had as follows:)

Mr. MALONEY. Judge, there is just one thing. I think it is a rather minor point but you instructed the jury that they shall consider only the second, third and fifth counts. I just want to point out to your Honor that the second, third and fifth counts refer to the first count and incorporate by reference some of the material set forth in the first count.

I do not think it makes any difference, really. For instance, in the first paragraph of the second count, I believe a paragraph or so of count 1.

The COURT. Let me say that to the jury.

I am reminded to say to the jury that while your verdict should be taken only upon the second, third and fifth counts of the indictment, you will see when you examine the indictment that in each of those counts there is incorporated by reference certain allegations that are contained in the first and fourth counts.

Mr. MALONEY. Just the first count.

The COURT. Just the first count. Where that happens you will understand that that becomes, that matter, the reference becomes a part of the count with which you are concerned.

Mr. COHALAN. Your Honor, do you think that in accordance with that last suggestion that you made to the jury that it might also be a wise thing to say to them that in regard to that indictment going into the jury room that they may have reference in the counts which are not before this jury, only to such portions as are incorporated by reference in the counts that are before them.

Mr. MALONEY. That is right.

The COURT. Yes.

I am now asked to say that when you are invited to look back to the first count for matters which are incorporated by reference in counts 2, 3 and 5, you are not to give weight to any other matter in count 1, other than that which is so incorporated.

Mr. MCGUIRE. Your Honor, I should like to have noted for the record that defendant notes an exception to that part of the Court's charge which concerns legislative history of the Act of June 8, 1938, and to the statement of such legislative history and report of the committee or an expression of the intent of the said Act of June 8, 1938, as to the purpose of the Act to require a full disclosure to the American people of the activities of the agents of foreign principals.

Our objection to that part of your Honor's charge being based upon the fact that in a criminal case the intent of the Congress must be found within the four corners of the statute itself.

The COURT. Well, that may go to all the matter which I stated on that point.

Mr. MCGUIRE. Yes. The second objection; the defendant also objects to that part of the Court's

charge which referred to question 11 of the supplemental registration form as if it was the only one which required a statement concerning the business of the agent of the foreign principal, and wherein the Court failed to charge the jury that there were at least several other matters in the remaining 18 questions which required a statement of the details of the agent's identification, salary, principal's contract and other details of his business.

In other words, the objection to that is that the jury is not invited to consider the registration statement as a whole and all the evidence, all the statements which he has made in it, but we think it is error to leave in the minds of the jury the thought that they must look to question 11 for this information.

Of course I do not think it is your Honor's intention that that be done, but I believe the charge as made would leave that impression upon the jury.

Therefore, we ask for an exception to that part of the charge.

The COURT. Yes, you may have it.

Mr. MCGUIRE. Also, we except to that part of the general charge which states and leaves the impression upon the jury that the defendant must, in addition—this is the effect of the charge—must, in addition to answering question 11 of the supplemental form, must state all of his activities, whether he is engaged in performing those activities as a private individual or as an agent for a foreign principal.

The COURT. Yes.

Mr. COHALAN. And in closing, your Honor, may I just renew my exception to your granting of Government's prayers Nos. 2, 2–A and 8, if I may call them in that way.

The COURT. That is, No. 2 as rewritten?

Mr. COHALAN. 2 and 2–A.

Mr. HICKEY. 2–A is revised.

Mr. COHALAN. 2, 2–A and 8. And, to your refusal to charge defendant's prayers Nos. 2, 3, 14 and 19.

The COURT. Yes, you may have that.

(Counsel return to the counsel table.)

The COURT. The jury may take the case. When you return you will be asked for a separate verdict on each of the three counts which are for your determination.

Now, I appreciate very much the cooperation of the alternate jurors. They have given thoughtful attention to this case but under the statute at this point of the trial it is necessary to dispense with your presence. So, the alternate jurors may step out.

(The two alternate jurors were thereupon excused.)

The COURT. The jury may now retire and deliberate on their verdict.

(Thereupon, at 3:00 o'clock P. M., the jury retired to consider of their verdict.)

The CLERK. This court will recess until the return of the jury.

(Recess taken.)

U. S. GOVERNMENT PRINTING OFFICE: 1943

SUPREME COURT OF THE UNITED STATES.

No. 458.—October Term, 1942.

George Sylvester Viereck, Petitioner, vs. The United States of America.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 1, 1943.]

Mr. Chief Justice Stone delivered the opinion of the Court.

Petitioner was convicted on three counts of an indictment, each charging him with the willful omission to state a material fact required to be stated in a supplemental registration statement filed by him with the Secretary of State, in violation of the penal provisions of the Act of June 8, 1938, 52 Stat. 631, as amended by the Act of August 7, 1939, 53 Stat. 1244, requiring the registration of certain agents of foreign principals. The question decisive of petitioner's challenge to the validity of his conviction is whether the statute or any authorized regulation of the Secretary required the statement which petitioner omitted to make.

Section 2 of the Act of 1938, as amended, provides that every person acting as "agent of a foreign principal", either as public-relations counsel, publicity agent or representative, with exceptions not now relevant, must file with the Secretary of State a registration statement, on a form prescribed by the Secretary, containing certain specified items of information. These include a copy of the registrant's contract with his principal, or a statement of its terms and conditions if oral, the compensation to be paid under the contract, and the names of all who have contributed or promised to contribute to the compensation. Beyond the terms and conditions of the registrant's contracts with foreign principals, the statute made no requirement that the original registration statement contain any information as to the registrant's services or activities either in performance of his contract of employment or otherwise.

By § 3 every registrant is required to file at the end of each six months' period, following his original registration, a

supplemental statement "on a form prescribed by the Secretary, which shall set forth with respect to such preceding six months' period—(a) Such facts as may be necessary to make the information required under section 2 hereof accurate and current with respect to such period", and "(c) A statement containing such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal during such six months' period". And by §6, "The Secretary is authorized and directed to prescribe such rules, regulations, and forms as may be necessary to carry out this Act". Section 5 imposes penal sanctions upon "any person who willfully fails to file any statement required to be filed under this Act, or in complying with the provisions of this Act, makes a false statement of a material fact, or willfully omits to state any material fact required to be stated therein".

In purported conformity to the statute, the Secretary, on September 15, 1939, promulgated regulations and prescribed a form of "Supplemental Registration Statement". Chapter IV, regulation 12, of the regulations provided: "Agents of foreign principals who engage, whether or not on behalf of their foreign principal, in activities not included among the exceptions set forth in the act and regulations shall be considered subject to the requirement of registration". The prescribed form of Supplemental Registration Statement directed the registrant to make a statement giving certain items of information, No. 11 of which was "Comprehensive statement of nature of business of registrant".

The three counts of the indictment on which petitioner was convicted charged that in three successive supplemental registration statements filed by him on April 23, 1940, October 25, 1940, and April 25, 1941, as the agent of German principals, he had knowingly and willfully failed to disclose, in response to item 11 which called for a "Comprehensive statement of nature of business of registrant", numerous activities in which he had engaged during the period covered by the supplemental registration statement. On the trial it appeared that petitioner, on September 26, 1939, had registered as agent and United States correspondent for the *Münchner Neueste Nachrichten*, a Munich newspaper, and had later lodged with the State Department a copy of his contract, dated September 27, 1939, as agent and editorial writer for the German Library of Information, an agency of the German government, to do editorial work in connection with "Facts in Review", a pub-

lication of the Library. On March 17, 1941, petitioner registered his contract, with a person associated with the Munich newspaper, to act as agent for the publication in the United States of a book "The One Hundred Families Who Rule Great Britain".

There was also evidence from which the jury could have found that during the eighteen months' period covered by petitioner's three supplemental registration statements, and from August 3, 1940, he had controlled and financed Flanders Hall, a corporation which published numerous books and pamphlets from manuscripts furnished by petitioner; that it had also published other books furnished by petitioner which purported to be English translations of French or Dutch publications, or to have been compiled from English sources, but which were in fact translations of German books published by the *Deutsche Informationsstelle* of Berlin. All were highly critical of British foreign and colonial policy. During this period petitioner actively participated in the formation of the "Make Europe Pay War Debts Committee", and the "Islands for War Debts Committee", and made use of these organizations as a means of distributing propaganda through the press and radio and under Congressional frank. He also consulted with and was active in writing speeches for various members of Congress, and in securing distribution of the speeches under Congressional frank.

In making the statement required by item 11 in each of his three supplemental registration statements, petitioner responded to the request for a comprehensive statement of the nature of his business by the single phrase "Author and journalist". He made no further disclosure of his various activities during the period covered by the supplemental registration statements.

When submitting the case to the jury, the trial court, at the Government's request, charged that "if you find that the defendant engaged in the activities set forth in the indictment, it is not necessary that you find that he engaged in such activities on behalf of his foreign principal or principals. It is sufficient if you find that he engaged in the activities, whether on behalf of his foreign principal or principals or on his own behalf". On appropriate objection and exception to this instruction, petitioner contended that under the statute he was not required to disclose his activities on his own behalf but only those for foreign principals. The jury returned a verdict of guilty, the judgment

of conviction was affirmed by the Court of Appeals for the District of Columbia, 130 F. 2d 945, and we granted certiorari. 317 U. S. —.

As the charge left the jury free to return a verdict of guilty if it found that petitioner had willfully failed to disclose activities which were wholly on his own behalf, the conviction can be sustained only if the failure to disclose such activities was a criminal offense. In its brief and on the argument here the Government accordingly conceded that — even though the evidence might warrant a jury's finding that all petitioner's activities were in fact in behalf of his foreign principals—the conviction cannot stand if the charge was erroneous. See *Williams* v. *North Carolina*, decided December 21, 1942, p. 3; *Pierce* v. *United States*, 314 U. S. 306, 310. We are thus brought to the question whether the statute, supplemented by the regulations of the Secretary, required such information to be given and imposed penal sanctions for petitioner's willful failure to give it.

The Act of 1938 requiring registration of agents for foreign principals was a new type of legislation adopted in the critical period before the outbreak of the war. The general purpose of the legislation was to identify agents of foreign principals who might engage in subversive acts or in spreading foreign propaganda, and to require them to make public record of the nature of their employment. But the means adopted to accomplish that end are defined by the statute itself, which, as will presently appear more in detail, followed the recommendations of a House Committee which had investigated foreign propaganda. These means included the requirement of registration of agents for foreign principals—with which it appears that petitioner complied—and the requirement that the registrant give certain information concerning his activities as such agent.

One may be subjected to punishment for crime in the federal courts only for the commission or omission of an act defined by statute, or by regulation having legislative authority, and then only if punishment is authorized by Congress. *United States* v. *George*, 228 U. S. 14, 20-22; *Williamson* v. *United States*, 207 U. S. 425, 453-62; *United States* v. *Standard Brewery*, 251 U. S. 210, 219-20; *United States* v. *Eaton*, 144 U. S. 677; *United States* v. *Grimaud*, 220 U. S. 506; *United States* v. *Smull*, 236 U. S. 405; *In re Kollock*, 165 U. S. 526. Penal sanctions attach here for will-

ful failure to file a statement when required, or if the registrant "willfully omits to state any material fact required to be stated". Unless the statute, fairly read, demands the disclosure of the information which petitioner failed to give, he cannot be subjected to the statutory penalties.

It is to be noted that although the statute required registration of contracts already entered into at the time of its adoption, it did not include, in its enumeration of information to be given in the original registration statement, any disclosure of a registrant's activities either under his agency contract or otherwise. And the only mention in the statute of a statement of such activities is in § 3(c), which directed that supplemental registration statements contain "such details required under this Act as the Secretary shall fix, of the activities of such person as agent of a foreign principal". The requirement of this section is subject to two litimations. One is that the statement is to be of such details of the registrant's activities "as the Secretary shall fix"; the other is that the details are to be of activities of the registrant "as agent of a foreign principal".

Neither limitation can be disregarded in determining what statement the statute, and any regulation which it authorizes the Secretary to promulgate, called on petitioner to make. The Secretary's regulation 12 of chapter IV, already quoted, on which the Government relies, plainly does not call for any statement of a registrant's activities. It only declares that agents who engage in activities "whether or not on behalf of their foreign principal" are subject to registration. It requires no statement of their activities and adds nothing to the command of §§ 2 and 3 that all agents of foreign principals shall register, a requirement with which petitioner complied. Whatever the undisclosed purpose of this regulation, a fair reading of it would not indicate to a registrant that it required any statement of his activities in any capacity.

But treating item 11 of the Supplemental Registration Statement ("Comprehensive statement of nature of business of registrant"), prescribed by the Secretary, as a regulation fixing the details of the registrant's activities which he is required to state, it must either be taken as limited to a statement of his activities as agent, to which § 3(c) alone refers, or to exceed the authority conferred upon the Secretary by that section. In neither case does the statute command, or authorize the Secretary to command, registrants to

make any statement of their activities other than those in which they have engaged "as agent".

We cannot read that phrase as though it had been written "while an agent" or "who is an agent". The unambiguous words of a statute which imposes criminal penalties are not to be altered by judicial construction so as to punish one not otherwise within its reach, however deserving of punishment his conduct may seem. Nor is such an alteration by construction aided by reference to § 6, which directs the Secretary to prescribe rules and regulations "to carry out this Act". For, as we have seen, the only provision of the Act relating to statements of the registrant's activities is § 3(e), which defines its own and the Secretary's limitations. Section 6 does not give to the Secretary any authority not to be found in the Act, and especially not an authority which overrides the specific limitations of § 3(e).

While Congress undoubtedly had a general purpose to regulate agents of foreign principals in the public interest by directing them to register and furnish such information as the Act prescribed, we cannot add to its provisions other requirements merely because we think they might more successfully have effectuated that purpose. And we find nothing in the legislative history of the Act to indicate that anyone concerned in its adoption had any thought of requiring, or authorizing the Secretary to require, more than a statement of registrants' activities in behalf of their foreign principals.

In 1935 the McCormack committee, reporting on its Investigation of Nazi and Other Propaganda, recommended: "That the Congress should enact a statute requiring all publicity, propaganda, or public-relations agents or other agents or agencies, who represent in this country any foreign government or a foreign political party or foreign industrial or commercial organization, to register with the Secretary of State of the United States, and to state name and location of such foreign employer, the character of the service to be rendered, and the amount of compensation paid or to be paid therefor", H. R. Rep. No. 153, 74th Cong., 1st Sess., p. 23. The House and Senate committee reports, urging enactment of the McCormack bill which became the 1938 Act, both declare that its purpose was to carry out these recommendations of the McCormack committee. H. R. Rep. No. 1381, 75th Cong., 1st Sess., p. 1; S. Rep. No. 1783, 75th Cong., 3d Sess., p. 2.

As may be seen from the text which we have quoted, these recommendations were limited to the proposal of specific measures for achieving the committee's general purpose, by requiring disclosure of the identity of the agent and of his foreign principal and the agent's relationship to the principal. They give no hint of an intention to require agents to disclose activities not in behalf of their foreign principals. And in supporting the amendatory legislation enacted in 1942, which, among other additions, required registrants to make "a comprehensive statement of the nature of registrant's business", [Act of April 29, 1942, § 2(a)(3)], Representative McCormack stated: "The present bill strengthens the McCormack Act. I was experimenting at that time, and, naturally, when you are experimenting you cannot go as far as you can after you have had experience, and in the light of the experience gained from the administration of the McCormack Act, these amendments are necessary to strengthen the Act for the best interests of our country." 88 Cong. Rec., Jan. 28, 1942, p. 830.

Even though the specific restriction of § 3(c) were due to defective draftsmanship or to inadvertence, which hardly seems to be the case, men are not subjected to criminal punishment because their conduct offends our patriotic emotions or thwarts a general purpose sought to be effected by specific commands which they have not disobeyed. Nor are they to be held guilty of offenses which the statutes have omitted, though by inadvertence, to define and condemn. For the courts are without authority to repress evil save as the law has proscribed it and then only according to law.

The Government argues that the statute would have been a "halfway measure" had it not required, or at least authorized the Secretary to require, the registrant to reveal the propaganda which he put out other than on behalf of his foreign principal. Congress itself has recognized that the legislation was in this sense a halfway measure when in 1942 the Act was amended so as to require both original and supplemental registration statements to contain a "comprehensive statement of the nature of registrant's business", together with other specifically required information as to the character of registrants' activities. Act of April 29, 1942, §§ 2(a)(3), 2(a)(4), 2(a)(8), 2(a)(10), 2(b).

The Senate Judiciary Committee in recommending the 1942 legislation said that "the present Act is also improved by explicit enlargement of the registration provisions so as to render them more

efficacious for disclosure and investigative purposes." S. Rep. No. 913, 77th Cong., 1st Sess., p. 9. The House Judiciary Committee declared "the existing law is also believed to have been bolstered by explicit enlargement of the registration provisions so as to render them more efficacious for disclosure and investigative purposes. . . . All of these additions have been prompted by experience in cases under the present act." H. Rep. No. 1547, 77th Cong., 1st Sess., pp. 3-4.[1]

While we find in the committee reports no mention of the explicit restriction of the application of § 3(c) of the old Act to the registrant's activities "as agent", the reports reveal a clear purpose to make the registration requirements of the new Act extend to all his activities.[2] We think that in this respect the new Act

[1] This statement, which omitted to point out that the activities referred to in Section 3(c) were the registrant's activities "as agent", was copied verbatim from a statement which had been submitted at a hearing on November 28, 1941, by the Chief of the Special Defense Unit of the Department of Justice, who had a large share in drafting the 1942 legislation. See Hearings before Subcommittee No. 4 of the House Committee on the Judiciary, 77th Cong., 1st Sess., on H. R. 6045, pp. 26, 12. There is some language in his statement, also copied in the House Report at p. 4, which may indicate that the Department of Justice thought that the existing law required disclosure of "information about the nature of the registrant's business", and that the provision in the 1942 law would be "declaratory". If such was its meaning, the statement ignored and did not point out to the committee the explicit limitation of Section 3(c) of the old Act to the registrant's activities "as agent". Moreover, the statement was submitted by the Department after the institution of the prosecution of this case (the indictment was filed October 8, 1941). Hence in some measure it may have represented the Department's view of the law, which we think inadmissible, reflected in its requested charge to the jury in this case.

A like indefiniteness as to the extent to which the new legislation might be regarded as declaratory is suggested by the letter of the Attorney General of November 24, 1941, recommending the new legislation to the chairmen of the Senate and House Judiciary Committees. The Attorney General, however, seems to have thought that the provisions of the new bill would be declaratory, not of the provisions of the old Act, but of the "requirements of the registration statement of foreign agents as now prescribed or may be prescribed by the Secretary". Indication that the Attorney General did not regard the Act, before the 1942 amendment, as embodying this requirement of the Secretary is to be found in the first paragraph of his letter: "Under existing law, every person who is an agent of a foreign principal is required to file a registration statement with the Secretary of State, setting forth certain information disclosing the nature of his relationship to such foreign principal". Hearings, *supra*, pp. 55-56; S. Rep. No. 913, 77th Cong., 1st Sess., pp. 10-11.

[2] The committee reports referred to are reports on H. R. 6269, which was passed by Congress, but vetoed by the President because our entrance into the war had made it necessary to alter the bill in certain respects, not material here. A new bill, S. 2399, containing such changes, became the Act of April 29, 1942. See S. Rep. No. 1227, 77th Cong., 2d Sess.; H. R. Rep. No. 2033, 77th Cong., 2d Sess.

extends beyond the old, and that the application, *ex post facto*, of the new, to impose on petitioner a duty which the words of the old plainly exclude, is not to be justified by denominating the amendment as clarifying or declaratory legislation.

As the case must be remanded to the district court for further proceedings, we direct attention to conduct of the prosecuting attorney which we think prejudiced petitioner's right to a fair trial, and which independently of the error for which we reverse might well have placed the judgment of conviction in jeopardy. In his closing remarks to the jury he indulged in an appeal wholly irrelevant to any facts or issues in the case, the purpose and effect of which could only have been to arouse passion and prejudice.[3] The trial judge overruled, as coming too late, petitioner's objection first made in the course of the court's charge to the jury.

At a time when passion and prejudice are heightened by emotions stirred by our participation in a great war, we do not doubt that these remarks addressed to the jury were highly prejudicial, and that they were offensive to the dignity and good order with which all proceedings in court should be conducted. We think that the trial judge should have stopped counsel's discourse without waiting for an objection. "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty

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[3] "In closing, let me remind you, ladies and gentlemen, that this is war. This is war, harsh, cruel, murderous war. There are those who, right at this very moment, are plotting your death and my death; plotting our death and the death of our families because we have committed no other crime than that we do not agree with their ideas of persecution and concentration camps.

"This is war. It is a fight to the death. The American people are relying upon you ladies and gentlemen for their protection against this sort of a crime, just as much as they are relying upon the protection of the men who man the guns in Bataan Peninsula, and everywhere else. They are relying upon you ladies and gentlemen for their protection. We are at war. You have a duty to perform here.

"As a representative of your Government I am calling upon every one of you to do your duty."

to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." *Berger* v. *United States*, 295 U. S. 78, 88. Compare *N. Y. Central R. R. Co.* v. *Johnson*, 279 U. S. 310, 316-18.

Reversed.

Mr. Justice JACKSON and Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 458.—October Term, 1942.

George Sylvester Viereck, Petitioner, vs. The United States of America. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[March 1, 1943.]

Mr. Justice Black, with whom Mr. Justice Douglas concurs, dissenting.

The petitioner, having registered with the Secretary of State as a foreign agent, was convicted of wilful refusal to inform the Secretary of certain business activities in which he systematically attempted to influence the political thought of this country on behalf of Germany. The trial judge charged the jury not to convict the petitioner unless he had actual knowledge that the Act and the regulations required him to supply this information to the Secretary, and that having such knowledge he had refused to answer the Secretary's question with the "deliberate intention of avoiding the requirement of the statute." The jury found, and it is not questioned here, that the petitioner was a paid German propagandist engaged in various business activities, in all of which he made use of the same kind of propaganda calculated to further the interests of Germany in the United States. The Court holds that the congressional enactment required petitioner to reveal to the Secretary only the particular propaganda activities in which he engaged pursuant to his agency. It holds that the petitioner could keep secret, without violating the law, those propaganda activities undertaken on his own behalf, which were of exactly the same type and were intended to accomplish exactly the same purpose as those for which he had been hired by his German principals.

To this construction of the Act I cannot agree. I think that § 3(c) of the Act, which authorizes the Secretary to require statements "of the activities of such person as agent of a foreign principal" must be read in the light of the general purpose of the Act and in close connection with § 6, which permits the Secretary to

prescribe the "rules, regulations, and forms" necessary to carry out the Act. By such a reading, the Secretary was authorized to ask the question the petitioner failed to answer.

The general intent of the Act was to prevent secrecy as to any kind of political propaganda activity by foreign agents. Both the House and Senate Committees reporting the Bill under consideration declared it to be their purpose to turn "the spotlight of pitiless publicity" upon the propaganda activities of those who were hired by foreign principals. Appreciating that "propaganda efforts of such a nature are usually conducted in secrecy", they wanted to make full information concerning it "available to the American public" and sought by "the passage of this bill" to "force propaganda agents representing foreign agencies to come out 'in the open' in their activities, or to subject themselves to the penalties provided in said bill."[1] They declared that the purpose of the Bill was to require all such hired agents "to register with the State Department and to supply information about their *political activities*, their employers, and the terms of their contracts."[2]

What emerged from extended congressional investigations, hearings and deliberations was this Act, intended to provide an appropriate method to obtain information essential for the proper evaluation of political propaganda emanating from hired agents of foreign countries. As the House and Senate Committees considering the Bill said, it "does not in any way impair the right of freedom of speech, or of a free press, or other constitutional rights." Resting on the fundamental constitutional principle that our people, adequately informed, may be trusted to distinguish between the true and the false, the bill is intended to label information of

[1] Senate Report No. 1783, House Report No. 1381, 75th Cong., 3d Sess.

[2] The House Committee hearings, which are available in manuscript form only, show the same broad purpose. In explaining the Bill to the House Committee, its author pointed out that it was particularly aimed at firms, groups, or businesses, used "as a means for that particular country or political party to hide its identity" and that the Bill covered "all activities of all kinds, that is, all propaganda activities, no matter from what source it emanates." The Congressional Committee, whose Chairman was the author of this Bill, had discovered through hearings, that business enterprises had been utilized as a means for propagandizing, and that many persons including the petitioner here had published articles in various magazines, concealing their identity behind pseudonyms. The purpose of these activities, the Committee found, had been to influence "the policies, external and internal, of this country, through group action. They were employing the same method that they had employed in Germany for the purpose of obtaining control of the government over there."

foreign origin so that hearers and readers may not be deceived by the belief that the information comes from a disinterested source. Such legislation implements rather than detracts from the prized freedoms guaranteed by the First Amendment. No strained interpretation should frustrate its essential purpose.

Section 6 of the Act provides that "The Secretary is authorized and directed to prescribe such rules, regulations, and forms as may be necessary to carry out this Act." Congress did not set out in the Act the questions to be answered, and it surely did not intend to entrust the Secretary with no more than the power to copy the Act in seeking information. Such latitude as he has, the Secretary immediately used to require that "agents of foreign principals who engage, whether or not on behalf of their foreign principal," in political propaganda activity should register; and he asked the registrants to make a "comprehensive statement of nature of business." In view of the general purpose of the Act, such a question seems eminently reasonable. As a practical matter, the very fact that in the instant case it is extremely difficult to determine with conviction which activities the petitioner carried on in his own behalf and which he carried on in behalf of Germany is reason enough for requiring him to report on both. The Act did not contemplate that a foreign agent could evade its terms by claiming that all unreported political activities, upon their discovery by this government, were undertaken on his own behalf. Under the general power given the Secretary by § 6 to determine the form of questions, he was entitled to ask such questions as would make the enforcement of § 3(c) possible. I think the Secretary was authorized to ask the question under consideration in this case and that the Act required the petitioner to answer it.

As is pointed out in the opinion of the Court, the 1942 amendment to the Act explicitly authorizes the Secretary to ask the question which is involved in the instant case. The addition of this provision to the Act, however, I consider purely declaratory. The 1942 Bill was passed, as shown by the Senate and House reports, to serve four major purposes: It required the labeling of foreign propaganda mailed in the United States; transferred the administration of the Act from the Department of State to the Department of Justice; extended the application of the Act to certain propaganda affecting Latin America; and improved the enforcement provisions. The Attorney General, in expressing his views on

the bill, declared that the registration provisions of the amendment, which includes specific authorization to ask the very question now before us, were "merely declaratory".[3] If so, the Secretary had the authority to ask the same question under the 1938 Act.

The reversal here apparently does not rest on the concluding remarks of counsel for the government set forth in the Court's opinion. I am in accord with the sentiments expressed in *Berger* v. *United States*, 295 U. S. 78, 88, which the Court today repeats. In that case the Court declared that counsel had misstated the facts; put words into the mouths of witnesses which they had not said; intimated that statements had been made to him personally out of court in respect of which no proof was offered; pretended to understand that a witness had said something which he had not; bullied and argued with the witnesses; and committed other offenses. This Court properly declared that his conduct called for stern rebuke by the trial judge, for repressive measures, and "perhaps, if these were not successful, for the granting of a mistrial."

A prosecutor must draw a careful line. On the one hand, he should be fair; he should not seek to arouse passion or engender prejudice. On the other hand, earnestness or even a stirring eloquence cannot convict him of hitting foul blows.[4]

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[3] Sen. Report No. 913, 77th Cong., 1st Sess.

[4] "To shear him [the prosecutor] of all oratorical emphasis, while leaving wide latitude to the defense, is to load the scales of justice; it is to deny what has always been an accepted incident of jury trials, except in those jurisdictions where any serious execution of the criminal law has yielded to a ghostly phantom of the innocent man falsely convicted." Di Carlo v. United States, 6 F. 2d 364, 368.